

# Procedural rights in criminal proceedings: Existing level of safeguards in the European Union

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Freedom, security and justice

# Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

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*Completed version as per 12<sup>th</sup> December 2005*



European Commission

Directorate General  
Justice, Freedom and Security

**PROCEDURAL RIGHTS IN CRIMINAL PROCEEDINGS:  
EXISTING LEVEL OF SAFEGUARDS IN THE EUROPEAN UNION**

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## Introduction

### *General remarks*

The Commission's aim with this study is to assess levels of provision of procedural rights currently afforded to suspected persons in criminal proceedings throughout the EU, in order that conclusions about existing levels of safeguards and provisions of rights in the EU may be drawn up to ensure compliance with the Hague Programme, adopted on 5 November 2004, which states: "The further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards for procedural rights in criminal proceeding, based on the studies of the existing level of safeguards in Member States and with due respect for their legal traditions."

In February 2002, the Commission sent a questionnaire to the Ministries of Justice and Home Affairs in the Member States containing questions regarding existing criminal justice arrangements in the Member States (at that time 15). Similar questions were sent to the new Member States at a later time. Slovenia did not return the questionnaire.

The study consists of an examination of the replies to the questionnaire. Specific reference is made to the procedural rights covered by the Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the EU of 28 April 2004<sup>1</sup> (subsequently: the Proposed FD), in order to establish which Member States meet the Commission's proposed minimum standards and to identify any potential lacunae in relation to each of the areas of procedural rights covered by the Proposed FD. Although the questionnaire has a broader scope, this analysis is limited to the five rights mentioned in the Proposed FD:

1. the right to legal advice, including the level of legal aid;
2. the right to interpretation and translation for non-native defendants;
3. the right to specific attention for persons who cannot understand or follow the proceedings;
4. the right to communication and/or consular assistance;
5. the way in which the suspect/defendant is notified of his rights ('Letter of Rights').

In order to clarify these rights, reference is made to the relevant case law of the ECtHR and appropriate literature (where available).

It should be noted that the replies to the questionnaire are primarily based on formal legislation, rather than on their application in practice.

When processing the replies to the questionnaire, some responses were not clear or complete. Where appropriate, this will be indicated in the report. Please note that the replies could be out-dated, since the questionnaire was sent out in 2002. Responses were received during the course of 2002 and 2003. The new Member States returned their responses in the period from 2003 to 2005. In some Member States important changes were made to the Criminal Procedural Law after the questionnaires had been completed. This information is not included in this study.

### *Outline of this Report*

- I) Overview of the five basic rights as laid down in the Proposal for a Framework Decision on certain procedural rights in criminal proceedings throughout the European Union (the Proposed FD)
- II) Overview of the level of implementation of the five basic rights in each Member State, based on their answers in the questionnaire.

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<sup>1</sup> European Commission, "Proposal for a Council Framework Decision on certain Procedural Rights in Criminal Proceedings throughout the European Union", Brussels 28 April 2004 (COM (2004) 328).

- III) Analysis of the outcome of the questionnaire and identification of potential lacunae in relation to each of the abovementioned procedural rights
- IV) Summary and conclusions.

**This report will be available on-line : <http://arno.unimaas.nl/show.cgi?fid=3891>**

The report was finalised on 12 December 2005.

*Abbreviations*

CPT	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECmHR	European Commission of Human Rights
EU	European Union
Green Paper	Green Paper from the Commission on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union 19 February 2003, COM (2003) 75 final
ICCPR	International Convention on Civil and Political Rights
Proposed FD	Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union, 28 April 2004, COM (2004) 328 final, 2004/0113 (CNS)

# **1. Five Basic Rights as laid down in the Proposal for a Framework Decision on certain Procedural Rights in Criminal Proceedings throughout the European Union**

## **1.1 Background to the Proposed FD**

All EU Member States are party to the ECHR, the principal treaty setting out the basic standards for suspects' procedural rights in the EU. However, research of the European Commission (EC) has shown that existing divergent practices have hitherto hindered mutual trust and confidence. In order to counter that risk, the Commission has held that the EU is justified in taking action on procedural rights<sup>2</sup>. Higher visibility of safeguards would improve understanding on the part of all actors in the criminal justice systems in the Member States and hence facilitate compliance<sup>3</sup>.

On 19 February 2003, the EC published a Green Paper 'Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the EU'<sup>4</sup>. The Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union followed on 28 April 2004<sup>5</sup>.

The Proposed FD does not aim to create new rights or to monitor compliance with those rights that already exist under the ECHR or other international or European instruments, but rather aims to ensure a reasonable level of protection for suspects and defendants in criminal proceedings in order to comply with the principle of mutual recognition.

## **1.2 Structure of the overview**

This chapter provides a comprehensive overview of the five basic rights as set out in the Proposed FD. Each subparagraph deals with one basic right and is composed in the same structure:

- *Proposed provisions*: overview of the provisions as proposed by the Commission in its Proposed FD.
- *Rationale*: overview of the provisions that already exist under the ECHR including references to the explanatory note of the Proposed FD, relevant additional literature and case law when available. This overview is necessary to be able (1) to understand the rationale behind the proposed provisions and (2) to clarify the scope of these provisions.

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<sup>2</sup> Proposed FD, section 16.

<sup>3</sup> Proposed FD, section 9.

<sup>4</sup> Green Paper from the Commission 'Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union', Brussels, 19 February 2003, COM (2003) 75 final.

<sup>5</sup> Proposal for a 'Council Framework Decision on certain Procedural rights in Criminal Proceedings throughout the European Union', Brussels, 28 April 2004, COM (2004) 328 final, 2004/0113 (CNS).

### 1.3 Right to legal advice, including level of legal aid

According to the Commission, the right to legal advice is probably the key issue in procedural rights for suspects. A suspect who is represented by a lawyer is in a far better position as regards enforcement of all his other rights, partly because he is better informed of those rights and partly because a lawyer will assist him in ensuring that having his rights be respected<sup>6</sup>.

#### *Proposed provisions*

#### **ARTICLE 2: The right to legal advice**

1. A suspected person has the right to legal advice as soon as possible and throughout the criminal proceedings if he wishes to receive it.
2. A suspected person has the right to receive legal advice before answering questions in relation to the charge.

#### **ARTICLE 3: Obligation to provide legal advice**

Notwithstanding the right of a suspected person to refuse legal advice or to represent himself in any proceedings, it is required that certain suspected persons be offered legal advice so as to safeguard fairness of proceedings. Accordingly, Member States shall ensure that legal advice is available to any suspected person who:

- is remanded in custody prior to the trial, or
- is formally accused of having committed a criminal offence which involves a complex factual or legal situation or which is subject to severe punishment, in particular where in a Member State, there is a mandatory sentence of more than one year's imprisonment for the offence, or
- is the subject of an European Arrest Warrant, or extradition request or other surrender procedure, or
- is a minor, or
- appears not to be able to understand or follow the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition.

#### **ARTICLE 4: Obligation to ensure effectiveness of legal advice**

1. Member States shall ensure that only lawyers as described in Article 1 (2) (a) of Directive 98/5/EC<sup>7</sup> are entitled to give legal advice in accordance with this Framework Decision.
2. Member States shall ensure that a mechanism exists to provide a replacement lawyer if the legal advice given is found not to be effective.

#### **ARTICLE 5: The right to free legal advice**

1. Where Article 3 applies, the costs of legal advice shall be borne in whole or in part by the Member States if these costs would cause undue financial hardship to the suspected person or his dependents.
2. Member States may subsequently carry out enquiries to ascertain whether the suspected person's means allow him to contribute towards the costs of the legal advice with a view to recovering all or part of it.

#### *Rationale*

In the explanatory note on the Proposed FD criminal proceedings are defined as 'all proceedings taking place within the European Union aiming to establish the guilt or innocence of a person suspected of having committed a criminal offence or to decide on the outcome following a guilty plea

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<sup>6</sup> Green Paper, section 4.1.

<sup>7</sup> Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998.



in respect of a criminal charge'<sup>8</sup>. Legal advice before answering any questions in relation to the charge should protect the suspect against making statements without understanding the legal implications that he (or she) subsequently regrets<sup>9</sup>. The suspect cannot be expected to assess the effectiveness of his legal representation; hence the need for Member States to introduce a monitoring system<sup>10</sup>. This last provision is not stipulated in the ECHR, although the right to effective legal assistance can be deduced from ECtHR case law.

The guarantees laid down in Art. 6 (§3) ECHR are not an end in themselves, but must be interpreted in the light of their function in the overall context of the proceedings<sup>11</sup>. Although one must be cautious in drawing general conclusions from ECtHR case law, the following guidelines can be suggested<sup>12</sup>.

#### Legal assistance in general

The right to legal assistance is covered by art. 6 (§3, b and c) ECHR, which stipulates the right of every suspect to have the necessary time and facilities at his disposal to prepare his defence properly. The suspect has the right to choose to defend himself, to be assisted by a lawyer of his own choosing, or to have a lawyer assigned to him in case he does not have the means to pay for a lawyer himself. The right to legal assistance is covered by other European and international treaties and charters as well; for instance the ICCPR<sup>13</sup>, the Universal Declaration of Human Rights<sup>14</sup>, the Charter on Fundamental Rights in the European Union<sup>15</sup>, the American Convention on Human Rights<sup>16</sup>, The African Charter on Human Rights and Peoples Rights<sup>17</sup> and the UN-resolution on 'Basic Principles on the Role of Lawyers' of 1990<sup>18</sup>.

#### Legal assistance during police interrogation

The right to legal representation arises immediately upon arrest, although a reasonable time is allowed for the lawyer to arrive<sup>19</sup>. However, according to the ECtHR the right to have a lawyer present during police interrogation cannot in general be derived from Art. 6 (§3) ECHR<sup>20</sup>.

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<sup>8</sup> Proposed FD, section 32.

<sup>9</sup> Proposed FD, section 55.

<sup>10</sup> Proposed FD, section 59.

<sup>11</sup> ECtHR 12 July 1984, *Can* (B 79), § 48.

<sup>12</sup> "The court sees it as its task to ascertain whether the proceedings considered as a whole were fair", which is standard case law of the ECtHR, see for example ECtHR 20 November 1989, *Kostovski*, A 166, § 39 and ECtHR 16 December 1992, *Edwards* (A 247-B), § 34.

<sup>13</sup> Art. 14 (§3, b and d) ICCPR which covers almost the same as Art. 6 ECHR, adding the right to be informed of his right to legal assistance.

<sup>14</sup> In Art. 11 of the Universal Declaration on Human Rights is determined that everyone being accused of having committed a crime, has the right to have all the guarantees necessary for his defence at his disposal.

<sup>15</sup> Art. 47 CFREU (Right to an effective remedy and to a fair trial).

<sup>16</sup> Art. 8 (§ 2, c – e) of the American Convention on Human Rights covers the same guarantees as Art. 6 ECHR, but adds the right 'to communicate freely and privately with his counsel'.

<sup>17</sup> The African Charter on Human Rights and Peoples Rights also guarantees in Art. 7 (§ 1, c) the right to legal advice, including the right to be advised by a lawyer of his own choice.

<sup>18</sup> In this respect the UN-resolution on 'Basic Principles on the Role of Lawyers' - adopted by the Eight Crime Congress, Havana, 7 September 1990, ratified by Resolution 45/121 of the General Assembly of the UN dated 14 December 1990 - is also of great importance. The ground rules of the rights and duties of lawyers are prescribed in this resolution, emphasising the obligation of the government to guarantee the independence of the legal profession. Freedom of speech and association and assembly of lawyers should be respected and governments have to recognise that the communication between lawyers and clients is confidential. The government also has to guarantee that lawyers have access to the file and information at the earliest possible stage in the proceedings.

<sup>19</sup> ECtHR 8 February 1996, *John Murray* (Reports 1996-I).

<sup>20</sup> In *Dougan* (ECtHR 14 December 1999, no 44738/98) the ECtHR held: "Before the Court of Appeal they argued for the first time that the statements made by the applicant to the police should have been declared inadmissible on account of the absence of a solicitor during interview. However the merits of that argument must be tested against the circumstances of the case. Quite apart from the consideration that this line of defence should have been used at first instance, the Court considers that an applicant cannot rely on Article 6 to claim the right to have a solicitor physically present during interview." See also ECtHR 16 October 2001, *Brennan* (nr. 39846/98).

Under certain circumstances, the physical presence of a lawyer can provide the necessary counterbalance against pressure used by the police during interviews<sup>21</sup>. When the suspect has to make decisions during police interrogations that may be decisive for the further course of the proceedings, he has the right to consult a lawyer prior to these interrogations<sup>22</sup>. This consideration is acknowledged in Art. 2 (§2) of the Proposed FD.

In contradiction to the view of the ECtHR that a suspect cannot rely on Article 6 to claim the right to have a solicitor physically present during interview, the Yugoslavia Tribunal acknowledges the right to representation by a lawyer during police interrogation<sup>23</sup>. If this right is violated, the evidence obtained during that interrogation is excluded from the proceedings<sup>24</sup>. According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the right to have a lawyer present during police interrogation is one of the fundamental safeguards against ill-treatment of detained persons<sup>25</sup>.

#### Obligation to provide legal advice

Notwithstanding the fact that the suspect is entitled to defend himself, obligatory legal representation can be prescribed under certain circumstances, for example when an appeal is lodged<sup>26</sup>. Other circumstances, which are not mentioned in ECtHR case law in relation to obligatory legal advice, are cited in Art. 3 of the Proposed FD. The obligation to provide legal advice when the suspect is the subject of an European Arrest Warrant, extradition request or other surrender proceedings is an extension of existing provisions.

#### Effective legal assistance

One of the basic obligations of a lawyer is to assist his client, not only in the preparation of the trial itself, but also in the control of the legality of any measures taken in the course of the investigation proceedings<sup>27</sup>. Additionally, this legal assistance has to be effective and the State is under the obligation to ensure that the lawyer has the information necessary to conduct a proper defence<sup>28</sup>. If legal representation is ineffective, the State is obliged to provide the suspect with another lawyer<sup>29</sup>. Yet the ECtHR has clearly held that the lawyer's conduct is essentially an affair between the lawyer and his client. This is an important recognition by the ECtHR of the independence of the lawyer<sup>30</sup>. This independence is threatened when the State is held responsible for every lawyer's shortcomings. The suspect should not be burdened with the risk of ineffective legal representation. Therefore the

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<sup>21</sup> ECtHR 6 June 2000, *Magee* (no. 28135/95) and ECtHR 2 May 2000, *Codron* (no. 35718/97): "The fact that an accused person who is questioned under caution is assured access to legal advice, and in the applicants' case the physical presence of a solicitor during police interview must be considered a particularly important safeguard for dispelling any compulsion to speak which may be inherent in the terms of the caution. For the court, particular caution is required when a domestic court seeks to attach weight to the fact that a person who is arrested in connection with a criminal offence and who has not been given access to a lawyer does not provide detailed responses when confronted with questions the answers to which may be incriminating." (§ 60).

<sup>22</sup> ECtHR 6 June 2000, *Averill* (no. 36408/97).

<sup>23</sup> Art. 18 (§3) Statute of the International Tribunal for the former Yugoslavia (ICTY).

<sup>24</sup> Decision on the Defence Motion to Exclude Evidence van het Joegoslavië Tribunaal in *Zdravko Mucic*, 2 September 1997, Case No. IT-96-21-T, Trial Chamber II.

<sup>25</sup> 2<sup>nd</sup> General report (CPT/Inf (92) 3), sections 36-38.

<sup>26</sup> ECtHR 24 November 1986, *Gillow* (A 109); ECtHR 25 September 1992, *Croissant* (A 237-B); ECtHR 14 January 2003, *Lagerblom* (no. 26891/95).

<sup>27</sup> ECmHR 12 July 1984, *Can* (B 79); ECtHR 4 March 2003, *Öcalan*, (no. 63486/00).

<sup>28</sup> ECtHR 9 April 1984, *Goddi* (A 76); ECtHR 4 March 2003, *Öcalan*, (no. 63486/00).

<sup>29</sup> ECtHR 13 May 1980, *Artico* (A 37).

<sup>30</sup> ECtHR 24 November 1993, *Imbrioscia*, (A 275), § 41: "However that may be, the applicant did not at the outset have the necessary legal support, but 'a state cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal purposes'. (...) Owing to the legal professions' independence, the conduct of the defence is essentially a matter between the defendant and his representative; under Art. 6 (§3c) the contracting States are required to intervene only if a failure by counsel to provide effective representation is manifest or sufficiently brought to their attention".

ECtHR has held that ‘States are required to intervene only if a failure by counsel to provide effective representation is manifest or sufficiently brought to their attention’<sup>31</sup>. The suspect does not have to prove that he has been prejudiced due to lack of effective legal assistance<sup>32</sup>, nor is it necessary that damages have arisen<sup>33</sup>.

#### Free legal aid

The right to free legal aid is not unconditional. Art. 6 (§3c) ECRM stipulates that a suspect has the right to free legal aid on two conditions, namely if (1) he has not sufficient means to pay for legal assistance and (2) when the interests of justice so require.

The ECtHR indicates three factors which should be taken into account<sup>34</sup>:

- the seriousness of the offence and the severity of the potential sentence,
- the complexity of the case, and
- the social and personal situation of the defendant.

The right to free legal aid exists whenever the deprivation of liberty is at stake<sup>35</sup>, narrowing down the definition of ‘interests of justice’. Denying free legal aid for a period during which procedural acts, including questioning of the applicants and their medical examinations are carried out is unacceptable according to the ECtHR<sup>36</sup>.

The ECtHR holds that the suspect does not have to prove ‘beyond all doubt’ that he lacks the means to pay for his defence<sup>37</sup>. Member States are free to operate the system that appears to them to be the most effective as long as free legal advice remains available where the interests of justice demand it<sup>38</sup>.

### **1.4 Right to interpretation and translation**

Suspects who do not speak or understand the language of the proceedings are clearly at a disadvantage. They are especially vulnerable, whatever their circumstances. Consequently, the right to interpretation and translation strikes the Commission as particularly important<sup>39</sup>.

#### *Proposed provisions*

##### **ARTICLE 6: The right to free interpretation**

1. Member States shall ensure that a suspected person who does not understand the language of the proceedings is provided with free interpretation in order to safeguard the fairness of the proceedings.
2. Member States shall ensure that, where necessary, a suspected person receives free interpretation of legal advice received throughout the criminal proceedings.
3. The right to free interpretation applies to persons with hearing or speech impairments.

##### **ARTICLE 7: The right to free translation of relevant documents**

1. Member States shall ensure that a suspected person who does not understand the language of the proceedings is provided with free translations of all relevant documents in order to safeguard the fairness of the proceedings.
2. The decision regarding which documents need to be translated shall be taken by the competent authorities. The suspected person’s lawyer may ask for translation of further documents.

##### **ARTICLE 8: Accuracy of the translation and interpretation**

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<sup>31</sup> ECtHR 24 November 1993, *Imbrioscia* (A 275), § 41.

<sup>32</sup> ECtHR 13 May 1980, *Artico* (A 37).

<sup>33</sup> ECtHR 19 February 1991, *Alimena* (A 195-D).

<sup>34</sup> ECtHR 24 May 1991, *Quaranta* (A, 205, § 35).

<sup>35</sup> ECtHR 10 June 1996, *Benham* (Reports 1996-III).

<sup>36</sup> ECtHR 20 June 2002, *Berlinski* (no. 27715/95 and 30209/96).

<sup>37</sup> ECtHR 25 April 1983, *Pakelli* (A, 64, § 34).

<sup>38</sup> Proposed FD, section 60-61.

<sup>39</sup> Green Paper, section 5.2.

1. Member States shall ensure that the translators and interpreters employed are sufficiently qualified to provide accurate translation and interpretation.
2. Member States shall ensure that if the translation or interpretation is found not to be accurate, a mechanism exists to provide a replacement interpreter or translator.

**ARTICLE 9: Recording the proceedings**

Member States shall ensure that, where proceedings are conducted through an interpreter, an audio or video recording is made in order to ensure quality control. A transcript of the recording shall be provided to any party in the event of a dispute. The transcript may only be used for the purposes of verifying the accuracy of the interpretation.

*Rationale*

Art. 5 (§2) ECHR stipulates that everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. Art. 6 (§ 3, a and e) ECHR also stipulates that everyone charged with a criminal offence has the right to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; and to have the free assistance of an interpreter if he cannot understand or speak the language used in court<sup>40</sup>.

The right to **free** interpretation is established in ECtHR case law<sup>41</sup>. It extends to all parts of the criminal proceedings, which means that Member States have to provide an interpreter as soon as possible after it has come to light that the suspect is in need of an interpreter<sup>42</sup>. This seems to be decided on an ad hoc basis by the official the suspect or defendant comes into contact with (police officers, lawyers, court staff, etc.). The ultimate duty to ensure fairness of the proceedings rests with the trial judge<sup>43</sup>, since he is the ultimate guardian of the fairness of the proceedings<sup>44</sup>.

The right to free translation of documents is not explicitly mentioned in Art. 6 ECHR. It is, however, established in ECtHR case law and incorporated by the EC in the Proposed FD. The ECtHR held that only those documents, which the defendant ‘needs to understand in order to have a fair trial’ need to be translated<sup>45</sup>. The rules on how much material is translated vary according to the Member State and also in accordance with the nature of the case. According to the EC, this variation is acceptable as long as the proceedings remain ‘fair’<sup>46</sup>. The onus should be on the defence lawyer to ask for translations of any documents he considers necessary over and above what is provided by the prosecution<sup>47</sup>.

According to the explanatory note to the Proposed FD, the standard of interpretation and translation must be of sufficient standard to enable the suspect to understand the nature and cause of the accusation<sup>48</sup>.

The interpretation should enable the defendant’s “effective participation” in the proceedings. The proceedings should be recorded as a method of verifying that the interpretation was accurate. Recordings should not be used to challenge the proceedings from any other point of view<sup>49</sup>.

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<sup>40</sup> This is also covered by Art. 14 (§3, a and f) ICCPR and Art. 55 and 67 of the Rome Statute. The Rome Statute provides in Art. 55 the right to an interpreter and a translator for persons under investigation. Art. 67 of the Rome Statute provides for interpretation and translation at trial.

<sup>41</sup> ECtHR 28 November 1978, *Luedicke, Belkacem and Koç* (A 29).

<sup>42</sup> Proposed FD, section 63.

<sup>43</sup> Green Paper, section 5.2.1 (a).

<sup>44</sup> ECtHR 24 September 2002, *Cusani* ( nr. 32771/96).

<sup>45</sup> ECtHR 19 December 1989, *Kamasinski* (A 168); see also ECtHR 14 January 2003, *Lagerblom* (no. 26891/95).

<sup>46</sup> Green Paper, section 5.2.1 (c).

<sup>47</sup> Proposed FD, section 66.

<sup>48</sup> Proposed FD, section 67.

<sup>49</sup> Proposed FD, section 69 and 70.

Whilst Member States are conscious of these obligations in theory, these are not complied with in full in reality<sup>50</sup>. The difficulty, however, is not one of acceptance on the part of the Member States, but one of levels and means of provision, and perhaps most importantly, costs of implementation<sup>51</sup>.

In order to comply with the provision on accurate translation and interpretation, research<sup>52</sup> has shown that a training system for translators is essential. The training system should focus on general practice of interpretation and translation and specific practice of the legal system. According to this study, Member States which currently do not have any training system should be required to develop one. As guaranteeing the quality of the training is of real importance, according to the study, standards should be governed and accredited by an independent body. This accreditation must be renewed on a regular basis, to maintain skills and continuous professional development. Furthermore, a register should be made, listing all accredited interpreters and translators, and should be easily accessible to courts and legal practitioners. In this regard, it is important to stress that interpretation and translation are two different professions which should be treated accordingly. Consequently two different registers are required<sup>53</sup>.

Another difficulty is the translation and interpretation of uncommon languages. It is for the Member States to make arrangements to cover such languages<sup>54</sup>.

Member States must make funds available to make court interpretation and translation a more attractive career option to language graduates. Also law graduates with excellent language skills should be encouraged to join the profession and offered appropriate training<sup>55</sup>.

Member States should also make an effort to recruit a sufficient number of translators and interpreters<sup>56</sup>.

## **1.5 Right to specific attention for vulnerable suspects**

Vulnerable suspects require proper protection as far as procedural safeguards are concerned, to offset their disadvantages. This presents, however, two substantial difficulties: (1) defining vulnerable groups and (2) establishing the mechanisms for offering the appropriate protection.

According to the EC potentially vulnerable groups are for instance (but not exclusively):

- Foreign nationals, who are vulnerable by virtue of their nationality, linguistic disadvantage and other factors.
- Children, defined as all persons under 18<sup>57</sup>.
- Mentally or physically handicapped persons.
- Persons who have children or dependants (such as pregnant women and single parents of young children).
- Persons who cannot read or write.
- Persons with a refugee status under the 1951 Refugee Convention, other beneficiaries of international protection and asylum seekers.
- Persons addicted to alcohol or drugs.

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<sup>50</sup> Proposed FD, section 36 - In some cases even a prisoner's cellmate is used as an interpreter.

<sup>51</sup> Green Paper, section 5.2.

<sup>52</sup> The research was carried out by the Lessius Hogeschool with the aid of a European Commission 'Grotius' subsidy (Grotius II project 2001/GRP/015); see also Heleen Keijzer-Lambooy, Willem Jan Gasille, (eds.) Instruments for Lifting Language Barriers in Intercultural Legal Proceedings EU project JAI/2003/AGIS/048, ITV Hogeschool voor Tolken en Vertalers 2005.

<sup>53</sup> C. Morgan, 'The Commission's draft proposal for a Framework Decision on certain procedural rights applying in proceedings in criminal matters throughout the European Union' in: Heleen Keijzer-Lambooy, Willem Jan Gasille, (eds.) Instruments for Lifting Language Barriers in Intercultural Legal Proceedings, p. 27 – 28. See also the Green Paper, section 5.2.2 (a).

<sup>54</sup> Green Paper, section 5.2.2 (c).

<sup>55</sup> Green Paper, section 5.2.2 (d).

<sup>56</sup> Green Paper, section 5.2.2 (e).

<sup>57</sup> Art. 1 of the Convention of the Rights of the Child.

*Proposed provisions*

**ARTICLE 10: The right to specific attention**

1. Member States shall ensure that a suspected person who cannot understand or follow the content or the meaning of the proceedings owing to his age, mental, physical or emotional condition is given specific attention in order to safeguard the fairness of the proceedings.
2. Member States shall ensure that the competent authorities are obliged to consider and record in writing the need for specific attention throughout the proceedings, as soon as there is any indication that Article 10 (1) applies.
3. Member States shall ensure that any step taken as a consequence of this right shall be recorded in writing.

**ARTICLE 11: The rights of suspected persons entitled to specific attention**

1. Member States shall ensure that an audio or video recording is made of any questioning of suspected persons entitled to specific attention. A transcript of the recording shall be provided to any party in the event of a dispute.
2. Member States shall ensure that medical assistance is provided whenever necessary.
3. Where appropriate, specific attention may include the right to have a third person present during any questioning by police or judicial authorities.

*Rationale*

The ECHR does not provide any standards for the special assistance of vulnerable suspects. The ECtHR has stressed, however, in its case law that the right of an accused to effective participation in his or her trial includes not only the right to be present, but also to hear and follow the proceedings<sup>58</sup>. In the case of a child, according to the ECtHR, it is essential that he be dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings, including conducting the hearing in such a way as to reduce as far as possible his feelings of intimidation and inhibition<sup>59</sup>. If an accused is so intellectually impaired as to fail to understand the proceedings, the nature of the charges against him, and of what is consequently at stake, Article 6 par. 1 of the ECHR is violated. The accused must have a broad understanding of the nature of the trial including of the penalty which may be imposed. According to the ECtHR, this implies that if necessary he or she must be assisted by an interpreter, lawyer, social worker or friend<sup>60</sup>.

Consultation and replies to the Green Paper have shown that identifying vulnerable suspects is difficult. The minimum expectation is that law enforcement officers make a judgement as to whether the suspect is able to understand or follow the proceedings, by virtue of his age or mental, physical or emotional condition<sup>61</sup>.

When law enforcement officers question a vulnerable suspect it has to be audio or video recorded in order to verify whether the correct procedures have been followed. The presence of a third person during questioning provides an additional safeguard for the fairness of the proceedings<sup>62</sup>.

Some specific European and International conventions refer to rights of vulnerable suspects. The rights of children are protected by the Convention of the Rights of the Child of 1990<sup>63</sup>. Article 40 of this convention focuses on the rights of children as suspects in criminal proceedings<sup>64</sup>. According to

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<sup>58</sup> ECtHR 23 February 1994, *Stanford* (A 282-A).

<sup>59</sup> ECtHR 16 December 1999, *T v. United Kingdom*, (no. 24724/94).

<sup>60</sup> ECtHR 5 June 2004, *S.C. v. United Kingdom*, (no. 60958/00).

<sup>61</sup> Proposed FD, section 71.

<sup>62</sup> Proposed FD, section 72-74.

<sup>63</sup> General Assembly Resolution 44/25 of 20 November 1989, entered into force on 2 September 1990.

<sup>64</sup> Art. 40 (1) Convention of the Rights of the Child: "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and

Art. 40 (3) all States Parties have to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. Research of the EC has shown that this minimum age differs considerably across the Member State<sup>65</sup>.

Concerning refugees, other beneficiaries of international protection and asylum seekers, the EU is developing measures and standards in accordance with Article 63 of the Treaty establishing the European Community<sup>66</sup>.

## **1.6 Right to communication and / or consular assistance**

One group of vulnerable suspects is more easily identified: non-nationals, including nationals of other EU Member States and of third countries. According to the EC, numerous NGO's identify this group as one that does not always receive equitable treatment<sup>67</sup>.

### *Proposed provisions*

#### **ARTICLE 12: The right to communicate**

1. A suspected person remanded in custody has the right to have his family, persons assimilated to his family or his place of employment informed of the detention as soon as possible.
2. The competent authorities may communicate with the persons specified in Article 12 (1) by using any appropriate mechanisms, including consular authorities if the suspect is a national of another State and if he so wishes.

#### **ARTICLE 13: The right to communicate with consular authorities**

1. Member States shall ensure that a detained suspected person who is a non-national shall have the right to have the consular authorities of his home State informed of the detention as soon as possible and to communicate with the consular authorities if he so wishes.
2. Member States shall ensure that, if a detained suspected person does not wish to have assistance from the consular authorities of his home State, the assistance of a recognised international humanitarian organisation is offered as an alternative.
3. Member States shall ensure that a long-term non-national resident of an EU Member State shall be entitled to have the assistance of the consular authorities of that State on the same basis as its own nationals if he has good reason for not wanting the assistance of the consular authorities of his State of nationality.

### *Rationale*

The ECHR and the ECtHR have not dealt with the right of non-national suspects to communicate with relatives, employers or consular authorities.

The 1963 Vienna Convention on Consular Relations (VCCR) offers considerable protection of non-national suspects, if implemented in full<sup>68</sup>. Art. 36 (§1)<sup>69</sup> not only provides the right to communication

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fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."

<sup>65</sup> Green Paper, section 6.1 (b). For example, the age of criminal liability is set at 8 years in Scotland and 16 years in Portugal.

<sup>66</sup> Green Paper, section 6.1 (g), footnote 58.

<sup>67</sup> Green Paper, section 7.1.

<sup>68</sup> Green Paper, section 7.1.

<sup>69</sup> Art. 36 (§1) of the VCCR stipulates: "1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison

between non-nationals and consular authorities, but also the right to visit non-nationals in prison. The suspect also has the right to expressly refrain from contacting consular authorities, which has to be respected by the authorities of the Sending State.

It is clear to the EC that at present many defendants do not get the benefit of the right to communication (with consular authorities). This has two causes; (1) they are not (made) aware of this right and (2) defendants often refuse it for fear of the authorities in their Home State learning of their arrest abroad. However, there is very little information available on how often consular assistance is offered and whether Member States are failing to comply with this right<sup>70</sup>.

According to the EC, the International Committee of the Red Cross (ICRC), whose official functions include visits to detainees, is the most suitable international humanitarian organisation to offer assistance as an alternative for consular authorities<sup>71</sup>.

Article 13 proposes that the right to consular assistance be extended to long-term non-national residents of a Sending state, particularly if they have refugee status. Member States should ensure that this type of assistance is an option available to the suspect<sup>72</sup>.

The proposed provisions of the Proposed FD are deduced from Art. 36 of the VCCR. However, they do not stipulate the right of the consular authorities to visit detained non-nationals in the Sending State.

## 1.7 ‘Letter of Rights’

The EC suggests that Member States should be required to inform suspects and defendants with a written note of their basic rights: a ‘Letter of Rights’, which would significantly improve their knowledge about their position in the proceedings<sup>73</sup>.

### *Proposed provisions*

#### **ARTICLE 14: Duty to inform a suspected person of his rights in writing – Letter of Rights**

1. Member States shall ensure that all suspected persons are made aware of the procedural rights that are immediately relevant to them by written notification of them. This information shall include, but not be limited to, the rights set out in this Framework Decision.
2. Member States shall ensure that a standard translation exists of the written notification into all the official Community languages. The translations should be drawn up centrally and issued to the competent authorities so as to ensure that the same text is used throughout the Member State.
3. Member States shall ensure that police stations keep the text of the written notification in all the official Community languages so as to be able to offer an arrested person a copy in a language he understands.
4. Member States shall require that both the law enforcement officer and the suspect, if he is willing sign the Letter of Rights, as evidence that it has been offered, given and accepted. The Letter of Rights should be produced in duplicate, with one (signed) copy being retained by the

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or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

<sup>70</sup> Green Paper, section 7.1-7.2.

<sup>71</sup> Proposed FD, section 78.

<sup>72</sup> Proposed FD, section 79.

<sup>73</sup> Green Paper, section 8.1.



law enforcement officer and one (signed) copy begin retained by the suspect. A note should be made in the record stating that the Letter of Rights was offered, and whether or not the suspect agreed to sign it.

*Rationale*

Although the ECHR provides that everyone who is arrested shall be informed promptly, in a language which he understands of the reasons for his arrest and of any charge against him in detail (Art. 5 (§2) ECHR and Art. 6 (§ 3, a and e) ECHR), there is no special provision nor case law that the suspect should be notified immediately of his defence rights, in a language he understands, as proposed in the Proposed FD. According to the EC, it is important for both the investigating authorities and the persons being investigated to be fully aware of what rights exist. A Letter of Rights in a language the suspect understands, does not create new rights but is an efficient way of informing suspects of their rights, which, according to the case law of the ECtHR, are not meant to be only theoretical but also to be effective in practice.

## **2. Level of implementation of the Five Basic Rights by each Member State**

A quick and comprehensive overview of Member States' responses per question is available in the tables below. Only the questions of the questionnaire, which specifically refer to the five basic rights are included in this overview:

- a) Access to counsel (questions 4a – 4c, 5b, 10b)
- b) Right to legal aid (question 2a – 2c and 12c)
- c) Right to interpretation (and translation) (questions 6a – 6e)
- d) Right to translation (and interpretation) (questions, 8a – 8c and 7c)
- e) Right to specific attention for vulnerable suspects (questions 1a – 1c)

The right to communication and consular assistance and the right to be notified of your rights ('Letter of Rights') are not explicitly included in the questionnaire; hence these rights cannot be evaluated in this study. However, some Member States have included these rights in their responses to other questions. When available, these responses are included in the annexed tables and/or the analysis of Chapter 3.

When processing the replies to the questionnaire, some responses were not clear or complete. When appropriate, this will be indicated in the overview. The [--] indicates that the question was not answered by the Member State.

Please note that the replies could be out-dated, since the questionnaire was sent out in 2002 and responses were received during the course of 2002 and 2003. The new Member States returned their responses in the period from 2003 to 2005. In some Member States important changes were made to the Criminal Procedural Law after the questionnaires were completed. This information is not included in this study.

The responses indicated in the tables below are a reproduction of the essence of the actual responses of the Member States. The complete answers can be found in Annex 2.

## ACCESS TO COUNSEL

Member State	Austria	Belgium	Cyprus
<b>4a. What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>	Suspect is free to choose his own lawyer at any time. If remanded in custody, a lawyer will be appointed immediately if necessary.	The suspect has the right to choose his lawyer from the moment the examining judge wants to proceed with the arrest. If necessary, a lawyer will be appointed to the suspect. During first interrogation by examining judge, suspect has the right to free legal assistance.	Suspects may choose a lawyer or have one assigned within reasonable time.
<b>4b. Can a lawyer be present during questioning if suspect wishes it?</b>	No.	No.	Yes.
<b>4c. What is the evidential value of a confession made by the suspect in absence of a lawyer?</b>	The trial judge will examine the evidence as any other evidence. Presence or absence of a lawyer is of no legal significance.	Confessions do not have a decisive evidential value. Confessions are usually made in absence of a lawyer.	Confessions are of high evidential value, provided that they are made voluntarily.
<b>5b. Is the interview tape- or video recorded? If so, how many copies are made and who may receive one?</b>	No.	Yes, when it concerns interviews with minors or witnesses of serious, sexual crimes. No copies are made. All parties are entitled to view/hear the recordings.	No.
<b>10b. Is there a requirement that the defendant be represented by legal counsel in his absence?</b>	No.	No, but if the lawyer represents the defendant in his absence, the proceedings are considered to be contradictory.	In some cases it is a requirement and in other cases it is at the discretion of the Court.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Czech Rep.	Denmark	Estonia
<b>4a. What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>	Suspect has a right to choose his lawyer or have one appointed from the beginning of the proceedings. Legal aid is compulsory in case of custody, serious crime and when the suspect is minor.	When charged with a crime sanctioned with more than a fine: right to a lawyer. Assignment by the judge. No formal time limits (without undue delay).	Access to a lawyer within 24 hours from detention. The preliminary investigator will arrange participation of the lawyer.
<b>4b. Can a lawyer be present during questioning if suspect wishes it?</b>	Yes, but the suspect cannot consult the lawyer about how to answer a specific question.	Yes, unconditionally.	Yes, in some cases presence of the lawyer is obligatory.
<b>4c. What is the evidential value of a confession made by the suspect in absence of a lawyer?</b>	The confession is admissible, unless the suspect requested a lawyer to be present and this request is denied.	No formal evidential value: court is free to evaluate the evidence presented. Presence of a lawyer could be a relevant circumstance.	If presence of the lawyer is mandatory or if the suspect has requested presence of his lawyer and a confession is made in absence of a lawyer, this is not admissible as evidence.
<b>5b. Is the interview tape- or video recorded? If so, how many copies are made and who may receive one?</b>	Sometimes it is, the technical carrier of the record is attached to the file, or the file refers to where the carrier is kept. No copies are made, but parties can view/hear the records.	No.	Not regularly. No common standard as to the amount of copies and who is entitled to receive one.
<b>10b. Is there a requirement that the defendant be represented by legal counsel in his absence?</b>	Yes.	Yes.	No.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Finland	France	Germany
<b>4a. What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>	Right to a lawyer in all instances of the proceedings at all times. No time limit.	After arrest the suspect is brought before the examining judge and can choose or have assigned a lawyer.	Suspect is notified of his right to consult a lawyer at the beginning of the first examination. Suspect may consult his lawyer at any time.
<b>4b. Can a lawyer be present during questioning if suspect wishes it?</b>	Yes.	No.	Yes, if the suspect wishes his lawyer to be present. Questioning must be postponed if lawyer is not present yet, and the suspect hasn't agreed to proceed without his lawyer.
<b>4c. What is the evidential value of a confession made by the suspect in absence of a lawyer?</b>	Court is free to evaluate the evidence presented. Absence or presence of the lawyer is of no legal significance.	Court is free to evaluate the evidence presented. Presence or absence of the lawyer is of no legal significance.	Confessions made in the absence of the lawyer are admissible, if all procedural rules are followed correctly.
<b>5b. Is the interview tape- or video recorded? If so, how many copies are made and who may receive one?</b>	Always audio taped and sometimes (espec. with children) video taped. A transcript is made, which can be copied for all parties involved.	Yes, but only concerning minor suspects (tape and video). One copy is made and added to the files.	Tape recording, of which a transcript is made (sometimes video recordings). No copies are made, but the defence can view/hear the recordings.
<b>10b. Is there a requirement that the defendant be represented by legal counsel in his absence?</b>	No.	Yes.	No.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Greece	Hungary	Ireland
<b>4a. What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>	Access to a lawyer is given in all stages of the proceedings. Suspect is informed of this right as soon as he is charged.	Counsel has the right to be present and informed about any hearing/event/ act related to the investigation. Counsel will be appointed by the authorities to help the suspect before the first hearing at the latest.	Suspect will be informed without delay of his right to consult and have access to a solicitor.
<b>4b. Can a lawyer be present during questioning if suspect wishes it?</b>	Yes.	Yes.	No.
<b>4c. What is the evidential value of a confession made by the suspect in absence of a lawyer?</b>	Confessions are no evidence in itself, are usually considered with accused's pleading and rejoinder before the court.	Confessions made in absence of counsel are admissible, if counsel is informed properly of the interview and no procedural rules are breached. Court can freely evaluate evidence.	When it is a voluntary statement, it is admissible as evidence, whether the suspect had access to a lawyer or not.
<b>5b. Is the interview tape- or video recorded? If so, how many copies are made and who may receive one?</b>	No.	Suspect has the right to initiate that the interview is tape or video recorded. Mostly, suspects are entitled to request copies, but he has to pay for them, except when he is indigent.	Yes. Three copies are made, one for the file, one for the police and one for the prosecution. Defence can request for a copy in writing, which can be denied if it obstructs the investigation.
<b>10b. Is there a requirement that the defendant be represented by legal counsel in his absence?</b>	Yes.	Yes.	No.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Italy	Latvia	Lithuania
<b>4a. What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>	Automatically entitled to be defended.	Lawyer will participate in proceedings from the moment a person is acknowledged as a suspect. Suspect has to be interviewed within 24 hours from moment of detention.	Suspect is entitled to consult a lawyer from the time of detention or initial questioning.
<b>4b. Can a lawyer be present during questioning if suspect wishes it?</b>	Yes.	Yes.	Yes.
<b>4c. What is the evidential value of a confession made by the suspect in absence of a lawyer?</b>	Statements made in absence of a lawyer are inadmissible.	Confessions are evaluated by the court in light of all other circumstances of the case.	Presence or absence of a lawyer is of no legal significance. If the suspect later disputes his confession, this may be used as evidence.
<b>5b. Is the interview tape- or video recorded? If so, how many copies are made and who may receive one?</b>	Yes. Transcription of the recordings is made available on the parties' request.	Yes, no copies are made. Parties can view/hear the recordings after investigation is closed.	Yes. Parties have to request the public prosecutor for access to the recordings to view/hear them or to make copies of them.
<b>10b. Is there a requirement that the defendant be represented by legal counsel in his absence?</b>	Yes.	--	Yes.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Luxembourg	Malta	Netherlands
<b>4a. What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>	Prior to the first interview the suspect is informed of his right to consult a lawyer or have one assigned.	After 48 hours from arrest.	Suspect has always and at any time right to choose a lawyer or have one assigned.
<b>4b. Can a lawyer be present during questioning if suspect wishes it?</b>	Yes.	No, not yet.	Yes, but not during interrogation of the police.
<b>4c. What is the evidential value of a confession made by the suspect in absence of a lawyer?</b>	Court will evaluate the confession in light of the other evidence.	Full evidential value, if the confession is made voluntarily.	Judge may consider it as lawful evidence.
<b>5b. Is the interview tape- or video recorded? If so, how many copies are made and who may receive one?</b>	Yes, but only interviews with minors are audio and/or video recorded.	Police, accused and Court are entitled to a copy. (No answer as to the audio or video recording.)	Sometimes, police decides if it is appropriate and how many copies should be made (prosecution, defence and court)
<b>10b. Is there a requirement that the defendant be represented by legal counsel in his absence?</b>	Yes, under certain circumstances.	--	No.



## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Poland	Portugal	Slovak Rep.
<b>4a. What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>	Suspect has the right to contact a lawyer at any time. Lawyer-client conversations may be supervised by the police. Prior to the first examination, a suspect is informed of his rights, orally and in writing. Suspect is asked to sign for the receipt of these written instructions.	From the moment the suspect becomes a detainee, he has the right to choose a lawyer and be assisted at all stages of the proceedings.	--
<b>4b. Can a lawyer be present during questioning if suspect wishes it?</b>	Yes, lawyer is entitled to act in the whole proceedings.	Yes.	--
<b>4c. What is the evidential value of a confession made by the suspect in absence of a lawyer?</b>	Full evidential value, subject to examination by the court.	--	Anything that may contribute to properly clarifying the case and that has been obtained in a lawful manner can be used as evidence.
<b>5b. Is the interview tape- or video recorded? If so, how many copies are made and who may receive one?</b>	Not common practice, but it is possible. The interview is always recorded in writing. If tape or video recordings are made, they are attached to the written record. Parties can receive copies of the recordings on their own expenses.	First questioning is usually not audio or video recorded.	--
<b>10b. Is there a requirement that the defendant be represented by legal counsel in his absence?</b>	No, but if defence counsel is mandatory, he is obliged to participate in every hearing.	Yes.	Yes.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Spain	Sweden	England & Wales
<b>4a. What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>	Once the suspect is detained or charged he has the right to contact a lawyer. Time limit: 8 hours from the moment the police notifies the Bar of the suspect's detention.	From the moment a suspect is under arrest or detained, he can at any time appoint a lawyer or request to have a lawyer assigned to him.	Suspect in police custody is entitled to consult and communicate with his lawyer privately at all times. Access to a lawyer can be delayed for max. 36 hours, when it concerns a serious offence; if the suspect has not been charged yet and if exercising this right is considered to harm the investigation.
<b>4b. Can a lawyer be present during questioning if suspect wishes it?</b>	Yes, presence is obligatory.	Yes.	Yes, but only if solicitor is available or easily contactable.
<b>4c. What is the evidential value of a confession made by the suspect in absence of a lawyer?</b>	Confessions made in absence of a lawyer are void.	Submission and evaluation of evidence is free. The court will evaluate the evidence in light of all relevant circumstances of the case.	Confessions are admissible as evidence, but the court may verify if it is not obtained by oppression or as a consequence of something that would make it unreliable.
<b>5b. Is the interview tape- or video recorded? If so, how many copies are made and who may receive one?</b>	No legislation on this subject. If accepted by all parties, such recordings could be valid.	No obligation to record the interview. Recording only in writing. Defence is entitled to receive a copy after preliminary investigation is completed.	Tape recordings. Master copy and working copy are made. Suspect will receive a copy as soon as practicable. Custody officer can authorise the interviewing officer not to tape record the interview.
<b>10b. Is there a requirement that the defendant be represented by legal counsel in his absence?</b>	No.	No.	No, it is the counsel's own choice if he wants to represent his client in his absence.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Scotland
<b>4a. What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>	The suspect has the right to choose a lawyer when he is detained or cautioned and formally charged. Time limit: before appearing in court, but after conclusion of the police interview.
<b>4b. Can a lawyer be present during questioning if suspect wishes it?</b>	No.
<b>4c. What is the evidential value of a confession made by the suspect in absence of a lawyer?</b>	The confession is admissible as evidence, when it is voluntarily made and fairly obtained in all circumstances. Absence or presence of the lawyer is of no legal significance.
<b>5b. Is the interview tape- or video recorded? If so, how many copies are made and who may receive one?</b>	Depends on technical facilities. Two copies are made: one copy will be sealed and send to court.
<b>10b. Is there a requirement that the defendant be represented by legal counsel in his absence?</b>	In some circumstances it is a requirement, in other circumstances it is at the discretion of the Court.

## RIGHT TO LEGAL AID

Member State	Austria	Belgium	Cyprus
<b>2a. What is the national budget for legal aid in criminal proceedings?</b>	2002: € 13.990.000 for legal aid. 60% spent on criminal proceedings	2000-2001: € 25.280.000 (global budget)	119.000.000 CYP (= approx. € 207.576.557) = 2,5% total criminal justice budget *We doubt that this figure is accurate.
<b>2b. Scheme for emergency assistance on 24-hour basis? If so, what qualifications are required of lawyers participating in this scheme?</b>	No.	--	-- Suspects may always ask for assistance of a lawyer, who has to be registered in the Cyprus Bar Association.
<b>2c. How is the system for granting criminal legal aid for proceedings? What qualifications are required of lawyers participating in this scheme?</b>	Court decides on basis of information provided by the suspect on his financial situation. Committee of Professional Association of Lawyers will reserve a specific lawyer. Every lawyer can be called upon to provide legal aid. Remuneration of lawyers is a lump sum, which goes into a pension fund for lawyers. Additionally they receive € 182,00.	Court or registry decides on the application for legal aid. Suspects have to prove to be indigent. Lawyers are remunerated using a point system, the Ministry of Justice will determine the value of one point. No special qualifications needed for lawyers to participate in this scheme.	Suspect has to give details of his financial situation. If legal aid is granted, he can choose his own lawyer or have one appointed. Minimum and maximum scales of expenses are defined by a decision of the Supreme Court.
<b>12c. Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b>	Yes, if a defendant already has been assigned a defence counsel on legal aid. The proceedings will be assumed a difficult 'legal situation' and therefore legal aid will be available.	Yes, on the same conditions as other civil proceedings.	Yes, when the interests of justice so require.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Czech Rep.	Denmark	Estonia
<b>2a. What is the national budget for legal aid in criminal proceedings?</b>	2003: 327.827.000 Czech crowns (approx. € 1.128.958,602) (national budget)	2003: € 63.900.000 estimation expenses criminal proceedings	2002: 23.280.000 Est. Kr. (= approx. € 1.492.632) =97% of nat. budget State legal aid. Courts have a general jurisdiction.
<b>2b. Scheme for emergency assistance on 24-hour basis? If so, what qualifications are required of lawyers participating in this scheme?</b>	No.	Yes, lawyers are appointed by the Ministry of Justice. No special requirements, but preference is given to candidates with experience in criminal law and proceedings.	-- Suspect has the right to contact a lawyer from the moment of detention or of charge. Counsel has unlimited access to the suspect to meet him in private.
<b>2c. How is the system for granting criminal legal aid for proceedings? What qualifications are required of lawyers participating in this scheme?</b>	Chairman of the panel and the judge in the preparatory proceedings decide on the granting of legal aid. The suspect has to prove he is indigent. Only attorneys are allowed to provide legal aid. Remuneration is determined by state authority, based on fixed fees for particular actions in the proceedings.	State will initially cover legal aid, but when person is found guilty, state can claim reimbursement of costs. Costs exceeding the necessary costs are for the person's own liability.	Preliminary investigator, court or prosecutor (in simplified proceedings) can appoint defence counsel. Remuneration is based on fixed hourly rates, dependent on the difficulty of the case. The court decides on the actual amount of remuneration, which will be borne by the state in case of an acquittal. Not clear if this is also the case when an indigent accused is found guilty.
<b>12c. Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b>	Yes, same as in other procedures.	Yes, normal rules of criminal procedure apply.	Yes.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Finland	France	Germany
<b>2a. What is the national budget for legal aid in criminal proceedings?</b>	Budget public legal aid 2001: € 48.800.000; 70% of legal aid is given in criminal cases.	2002: € 80.639.000 (=1,65% of total budget for the Ministry of Justice)	--
<b>2b. Scheme for emergency assistance on 24-hour basis? If so, what qualifications are required of lawyers participating in this scheme?</b>	No. Legal aid offices operate from 8.00 – 16.15 on weekdays only. Mostly in criminal cases suspects refer to private attorneys.	Yes, Bar Associations have created a system to provide (indigent) suspects with a lawyer on a 24-hour basis. No special requirements needed.	Yes, but not yet everywhere in Germany. No special requirements needed.
<b>2c. How is the system for granting criminal legal aid for proceedings? What qualifications are required of lawyers participating in this scheme?</b>	Degree of free legal aid costs: € 252 for preparatory work (max. 3 h); € 118 for assistance in pre trial investigations (max. 2 h); € 303 for procedures in court (max. 3 h). More work : € 84/h, has to be justified. Travel and waiting time will also be compensated. Court decides on amount of remuneration. Lawyer has to have completed upper law degree at university.	A special committee of legal aid decides on the application for legal aid. Indigence of the suspect is examined. Suspect can choose his own lawyer. Remuneration is fixed by decree.	Court dealing with the case decides on granting of legal aid. Financial or personal circumstances of suspect are of no relevance for the granting of legal aid when defence counsel is mandatory. Under certain circumstances the defendant has to repay costs of legal aid. Remuneration of the lawyer depends on the complexity and duration of the proceedings.
<b>12c. Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b>	No, legal fees are covered by the compensation.	Yes, same as in other procedures.	Yes, but only if several conditions are met: - sufficient factual indications - complex factual or legal position - indigence of convicted person

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Greece	Hungary	Ireland
<b>2a. What is the national budget for legal aid in criminal proceedings?</b>	--	2003: € 6.000.000 (for legal counsels appointed ex officio). No overall figure available on total criminal justice budget.	2002: € 29.978.000 (criminal legal aid)
<b>2b. Scheme for emergency assistance on 24-hour basis? If so, what qualifications are required of lawyers participating in this scheme?</b>	No.	No, but if legal assistance is compulsory, suspect cannot be questioned before a legal counsel is appointed.	Yes. Any qualified solicitor is eligible to participate in the Scheme.
<b>2c. How is the system for granting criminal legal aid for proceedings? What qualifications are required of lawyers participating in this scheme?</b>	Court, judicial council or investigative authorities can order appointment of defence counsel, who is designated from a list submitted by the Bar Association. The list includes lawyers who so desire and is renewed every 3 years. Lawyer is paid the minimum fee as stipulated in the Code of Lawyers.	Counsel will be appointed when the suspect is in custody, or if he is indigent. Requirements for appointed counsel: members of the Bar, law degree, at least three years of legal practice, completed state exam. Counsel's travel and other reasonable costs are reimbursed. Counsel is also paid an hourly fee (2000HUF = €8) whenever he has to be present during the procedure.	Courts are responsible for granting legal aid. Application for it is made to the court either in person or by letter. Indigent suspects have a right to free legal aid. Applicant must establish that his means are insufficient. Remuneration depends on whether the lawyer has to act in District Court and appeals to the Circuit Court or in Circuit Courts and higher Courts.
<b>12c. Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b>	Yes, same as in other procedures.	Yes, same rules as in other civil procedures.	Yes, when legal aid is granted for the trial, it is also granted for any retrial intended to establish any miscarriage of justice.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Italy	Latvia	Lithuania
<b>2a. What is the national budget for legal aid in criminal proceedings?</b>	2002: € 38.269.456 (criminal legal aid)	--	2005: 7.150.000 LTL (= approx. € 2.070.783) for secondary legal aid (no separate amount for criminal legal aid)
<b>2b. Scheme for emergency assistance on 24-hour basis? If so, what qualifications are required of lawyers participating in this scheme?</b>	-- Each Bar Council draws up a list of lawyers who are available for appointment. Officially assigned lawyers must provide assistance and may be replaced only on justified grounds. Requirements: specific competences, proximity to the place of proceedings and availability, practice as a criminal lawyer for at least 2 years.	--	-- Suspects are entitled to defence from the time of the arrest or initial enquiry.
<b>2c. How is the system for granting criminal legal aid for proceedings? What qualifications are required of lawyers participating in this scheme?</b>	State funded legal aid is only available for persons with an annual income of less than € 9296. Defence counsel can be freely chosen, even by those making use of State legal aid.	--	The pre-trial investigation officer, prosecutor or court notifies the coordinator that defence counsel has to be assigned. Person's means is of no relevance. Amount of remuneration is determined by a Government decree and depends on whether the lawyer continuously (fixed fees) or occasionally (fees dependent on the case) provides secondary legal aid.
<b>12c. Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b>	Yes, same as in other procedures.	--	Yes, same as in other procedures.



## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Luxembourg	Malta	Netherlands
<b>2a. What is the national budget for legal aid in criminal proceedings?</b>	Unlimited global budget for legal aid.	-- Part of Attorney General's Office budget	2002: € 83.526.000 (criminal legal aid = 1,7% of criminal justice budget)
<b>2b. Scheme for emergency assistance on 24-hour basis? If so, what qualifications are required of lawyers participating in this scheme?</b>	No.	Yes, with experienced lawyers.	Yes, organisation of legal aid is divided in districts. Each Council of a district makes a scheme for emergency assistance. Amount of hours of emergency assistance varies per district. Requirements: registration as a member of the Bar Association, sometimes additional annual education is required.
<b>2c. How is the system for granting criminal legal aid for proceedings? What qualifications are required of lawyers participating in this scheme?</b>	The president of the Bar Association decides on the application to legal aid. Legal aid is only available for indigent suspects. Amount of remuneration is based on a fixed hourly rate.	Practically granted to all requesting it, based on financial means.	Only defendants with low income have a right to free legal aid. Lawyer must be assigned and registered a member of the Criminal Bar. No maximum amount of hours of legal aid. Council of a district pays the lawyer by the hour.
<b>12c. Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b>	Yes, same as in other procedures.	--	Yes.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Poland	Portugal	Slovak Rep.
<b>2a. What is the national budget for legal aid in criminal proceedings?</b>	Legal aid budget is divided among courts and Prosecutor's Offices. 2004: € 405.448,82 (=2,09% of the total budget) 2005: estimated € 316.582,95 (=1,84% of the total budget)	No specific budget for legal aid.	--
<b>2b. Scheme for emergency assistance on 24-hour basis? If so, what qualifications are required of lawyers participating in this scheme?</b>	Not a 24-hour scheme, but there is a list of duty lawyers (duty hours are on workdays from 9a.m. till 3p.m. and during the weekend designated lawyers have duty hours on the telephone. Only practicing lawyers can provide legal aid.	No. However since 2002 there is a list of trainee lawyers, produced by the Law Society, who are available in respective shifts to appear in police stations, whenever called.	--
<b>2c. How is the system for granting criminal legal aid for proceedings? What qualifications are required of lawyers participating in this scheme?</b>	Court appoints defence counsel. Suspect has to prove his indigence. Legal aid will be paid by the State in case of acquittal or discontinuance of the proceedings. In case of conviction or conditional discontinuance suspect can be obliged to pay the expenses of the counsel. Minimum rates for remuneration are determined by the Ministry of Justice.	The District Board of the Law Society appoints a lawyer within five days. Suspects have to prove their indigence. Remuneration of lawyers is based on fixed fees.	Legal aid is regulated in the Code of Criminal Procedure
<b>12c. Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b>	Yes, same as in other procedures.	Yes.	Yes, same as in other procedures.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Spain	Sweden	England & Wales
<b>2a. What is the national budget for legal aid in criminal proceedings?</b>	2002: € 25.242.510 (barrister's fees) € 2.283.850 (solicitor's fees): 86 % for professional services. Total=2,78% of total budget for Justice System.	2002: € 58.000.000 (public defence counsel) = approx. 88% of the total criminal justice budget.	£ 96.000.000 (= approx. €142.238.919) =6,07% of total criminal justice budget
<b>2b. Scheme for emergency assistance on 24-hour basis? If so, what qualifications are required of lawyers participating in this scheme?</b>	Yes, all the Bar Associations maintain constant 24 hour on-call schemes. All suspects are guaranteed the assistance of a lawyer within max. 8 hours. Requirements: practicing for minimum of 3 years and taken a special course run by the Bar Association. Special on-call scheme for lawyers specialising in minor suspects.	No special schemes. Any lawyer can at anytime be asked to assist a suspect in a criminal procedures.	-- Any suspect held in custody at a police station or other premises, has a right to choose his lawyer for legal advice and assistance.
<b>2c. How is the system for granting criminal legal aid for proceedings? What qualifications are required of lawyers participating in this scheme?</b>	Free Legal Aid Committee, in the capital of each Province, decides on granting legal aid. Suspects have to be indigent. Lawyers are paid by the Bar Associations. Qualifications: members of the corresponding Bar Association, meet all professional qualification requirements and must practise law in Spain.	Court decides on the appointment of a lawyer. Suspect's economic situation is not relevant. Lawyers have to be member of the Swedish Bar Association. Lawyer is paid by the State (fixed hourly rate). Also a fixed fee for minor cases. In case of conviction, suspect has to reimburse the reasonable costs for the counsel and for the victim's counsel.	Court decides on granting of free legal aid. No means test. When the case is heard at the Crown Court or a higher court, suspect is asked to provide details of his means, because at the end of the case, the court can ask for reimbursement of legal aid costs. Remuneration is mostly paid based on standard fees.
<b>12c. Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b>	Yes, same as in other procedures.	Yes, only when proceedings take place within regular court organisation.	Yes, when cases are being considered by Criminal Cases Review Commission; it concerns English law; sufficient benefit to the individual.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

<b>Member State</b>	Scotland
<b>2a. What is the national budget for legal aid in criminal proceedings?</b>	£ 79.663.000 (= approx. €118.033.114) (advice on criminal matters and criminal legal aid) =8% of total criminal justice budget
<b>2b. Scheme for emergency assistance on 24-hour basis? If so, what qualifications are required of lawyers participating in this scheme?</b>	No scheme covering assistance in police stations, except for identification parades, charges of (attempted) murder or culpable homicide. Requirements: lawyers have to be members of the Law Society and be registered with the Scottish Legal Aid Board.
<b>2c. How is the system for granting criminal legal aid for proceedings? What qualifications are required of lawyers participating in this scheme?</b>	Court grants criminal legal aid in solemn cases and does a means test. Suspect's financial situation is relevant. The lawyer is paid by the hour (fixed hourly rates) by the Legal Aid Fund. Criminal legal aid in summary cases is granted by the Board and is additionally assessed on whether it is in the interests of justice that legal aid should be available.
<b>12c. Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b>	Yes.

## RIGHT TO INTERPRETATION (AND TRANSLATION)

Member State	Austria	Belgium	Cyprus
<b>6a. What provisions exist for interpretation of questions and translation of relevant documents?</b>	§38a Code of Criminal Procedure: suspect will be granted the assistance of an interpreter.	When the suspect wants to use another language than the one used in the proceedings, translation and interpretation will be paid by the State.	If necessary, the Court will designate an interpreter, who will translate relevant documents for the suspects and assist the suspect during trial.
<b>6b. Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b>	No, if no interpreter is available, the authority may exceptionally consult other suitable persons.	No, but lists of registered interpreters are distributed among the police stations. It is impossible to determine exactly which languages are covered.	Yes, qualified police interpreters are called to translate into a language understood by the suspect. If a language is not covered, external translators shall be called to assist.
<b>6c. Is there a scheme for recruiting qualified translators/ interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?</b>	Yes, presidents of the district courts keep lists of sworn experts. Requirements: 5 years work experience or 2 years similar experience and a linguistic diploma. Inclusion on this list is only for a limited period and the application has to be renewed.	Interpreters and translators do not have a legal status yet. Interpreters have to be at least 21 years old.	Court interpreters shall be pre-approved by the Registrar of the Court and then approved by the Court. In addition the Court may test the ability of the interpreter and administer him an oath which the Court thinks fit.
<b>6d. Are interviews and interpretation of questions and replies tape- or video recorded? System to verify quality and accuracy of translation/ interpretation?</b>	No, quality of translation is guaranteed by strict criteria which interpreters must satisfy for initial and permanent inclusion on in the list of sworn and certified interpreters.	No, neither a specific system of verifying the accuracy of the translation/ interpretation.	No, written recording. Criminal Procedural Rules provide for a system for verification and the Court may test the ability of the interpreter.
<b>6e. What mechanisms exist to ensure foreign suspects understand the proceedings and what they are accused of from a legal point of view?</b>	The caution is translated in writing into several languages. At the beginning of the questioning the suspect is notified of the accusations and of his essential rights in the proceedings.	In case the suspect does not speak one of the official languages, and counsel cannot communicate with the suspect, an interpreter will be paid by the state for max 3 hours.	See 6d.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Czech Rep.	Denmark	Estonia
<b>6a. What provisions exist for interpretation of questions and translation of relevant documents?</b>	Relevant documents are translated into a language the suspect understands and submitted to the defendant in writing.	Persons who do not speak Danish shall be assisted to the extent necessary.	If necessary, an interpreter/ translator will be summoned to the investigative activity (art. 112 CCP).
<b>6b. Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b>	No.	No, but National Commissioner of Police administers a list of 1850 authorised interpreters, representing 140 languages and dialects.	No, but translation from/into Russian language is always available.
<b>6c. Is there a scheme for recruiting qualified translators/ interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?</b>	Only experts registered at the Ministry of Justice can act as translators/ interpreters in criminal proceedings. Requirements: Czech nationality, adequate professional knowledge of language, good personal characteristics.	Yes, National Commissioner of Police administers the interpretation scheme. He decides on an individual basis, based on a written application and a personal interview. Linguistic education is not a requirement.	No. Requirements: high school education and relevant language skills.
<b>6d. Are interviews and interpretation of questions and replies tape- or video recorded? System to verify quality and accuracy of translation/ interpretation?</b>	Not common practice (see 5b). If verbatim language of the testimony is significant, clerk will record the corresponding part of the testimony in that language. Verification: all registered translators have to take a vow to carry out their obligations faithfully.	No, complaints of the quality of the interpretation can be filed to the local police authority, complaint will be forwarded to the National Commissioner of Police.	No.
<b>6e. What mechanisms exist to ensure foreign suspects understand the proceedings and what they are accused of from a legal point of view?</b>	See 6a.	No formal test, in the course of the communication with a suspect it is evaluated whether the suspect needs an interpreter.	--

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Finland	France	Germany
<b>6a. What provisions exist for interpretation of questions and translation of relevant documents?</b>	Translator/ interpreter is provided on state's expenses on the same basis as legal aid.	If necessary an interpreter will assist the suspect throughout the entire proceedings, he will also interpret relevant documents.	Relevant documents will be translated. An interpreter will inform the suspect of at least the applications made in the closing speeches by the public prosecutor and by defence counsel. The defendant's own statements always have to be translated in full.
<b>6b. Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b>	Yes, all needed languages are covered. Sometimes translators have been called in from other countries for less known languages.	No, but there is a list of experts available at the Court of Appeal. Registration at this list is not obligatory.	No, but there is no problem in engaging the services of an interpreter within 24 hours. No restriction in terms of available languages.
<b>6c. Is there a scheme for recruiting qualified translators/ interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?</b>	No official scheme. Private certified translation offices are used. No special qualifications are required.	The interpreters and translators who want to be appointed by the police or other judicial authority, can request to be included on the list of experts of the Court of Appeal.	Interpreter or translator usually works on the same terms as an externally engaged expert. Interpreter will take an oath/ affirmation that he will convey the material faithfully and conscientiously.
<b>6d. Are interviews and interpretation of questions and replies tape- or video recorded? System to verify quality and accuracy of translation/ interpretation?</b>	Yes, normally tape recorded and written to transcript. If necessary also video taped. Suspect is asked to sign the transcript.	Only interviews with minor suspects are taped or video recorded. Verification of the accuracy of the interpretation is done by the suspect himself: the interpretation is read to the suspect, who is then asked to sign it if he agrees it is accurate.	General regulations governing recording of the interview on tape or video apply.
<b>6e. What mechanisms exist to ensure foreign suspects understand the proceedings and what they are accused of from a legal point of view?</b>	--	The suspect/ defendant will be assisted by the interpreter throughout the entire proceedings. If the interpreter is not present, the procedural act will be declared null.	See 6a.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Greece	Hungary	Ireland
<b>6a. What provisions exist for interpretation of questions and translation of relevant documents?</b>	Investigating authority determines whether the suspect's knowledge of Greek is insufficient. Sufficient time limit for translation of relevant documents will be granted.	Suspects are entitled to use their mother tongue, if that is not Hungarian, a free interpreter will be provided. Prosecutor or investigating authority provides translations of decisions and other official documents.	Interpretation is provided, whenever the police think it is necessary for the investigation and when the suspect has to be advised of certain matters. Interpreter is paid by the State.
<b>6b. Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b>	--	No, but all investigating authorities have a special database of interpreters and are able to appoint on within 24 hours. When official interpreter is not available, anyone capable of interpretation can be appointed.	--
<b>6c. Is there a scheme for recruiting qualified translators/ interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?</b>	--	No. There is a public authority that translates all written documents and provides interpretation. There is a list of persons who obtained an official interpreter identification card. Requirements: undergraduate degree and completed specialised training programme.	-- No specific qualifications.
<b>6d. Are interviews and interpretation of questions and replies tape- or video recorded? System to verify quality and accuracy of translation/ interpretation?</b>	General rules of tape- and video recording apply.	Suspect has the right to initiate the interview to be tape or video recorded. Costs for recordings have to be paid in advance.	--
<b>6e. What mechanisms exist to ensure foreign suspects understand the proceedings and what they are accused of from a legal point of view?</b>	No specific mechanisms.	Legal assistance is compulsory. An interpreter is appointed and authority has to inform explicitly if the suspect understands the proceedings.	-- Mechanisms of fairness and natural justice safeguard the suspect in this area.



## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Italy	Latvia	Lithuania
<b>6a. What provisions exist for interpretation of questions and translation of relevant documents?</b>	Art. 143 and 109 CCP: linguistic assistance is free and available when necessary. Provision of interpreting services shall be mandatory.	If necessary the suspect/ defendant is granted assistance of an interpreter/ translator by the court, prosecutor or preliminary investigation institution. Procedural documents are translated.	Art. 8 CCP: suspect has the right to take part in the proceedings using his own native language. When this occurs, he is entitled to an interpreter/ translator during the entire proceedings. All relevant documents are translated.
<b>6b. Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b>	No, but such assistance is nevertheless provided by calling on the services of those interpreters registered on the lists drawn up by each court office.	No, but in practice linguistic assistance is available within 24 hours. The LR Prosecution Office has an agreement with a company, providing translation services, which covers all languages.	No.
<b>6c. Is there a scheme for recruiting qualified translators/ interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?</b>	No professional register of court and legal interpreters. Each court office draws up a list of appropriate interpreters/ translators, possessing the necessary university qualification.	Required to understand the judicial meaning and sufficient linguistic knowledge. Testing period of 3 months.	If there are no grounds for objection, translators/ interpreters can be persons working at the police station. No special requirements for interpreters/ translators working in police stations.
<b>6d. Are interviews and interpretation of questions and replies tape- or video recorded? System to verify quality and accuracy of translation/ interpretation?</b>	No, also no formal procedures for verifying the quality of the work of interpreters and translators.	Not common practice, but if it is tape or video recorded, the entire proceedings have to be recorded. Translator is liable for translation quality and preciseness.	Yes, but not a requirement. If a recording is made, a language specialist can be invited to check the accuracy of the interpretation. If no such recording is made, there is no system of verification.
<b>6e. What mechanisms exist to ensure foreign suspects understand the proceedings and what they are accused of from a legal point of view?</b>	No specific measures, see 6a.	See 6a-6d.	No special measures.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Luxembourg	Malta	Netherlands
<b>6a. What provisions exist for interpretation of questions and translation of relevant documents?</b>	Police can engage any qualified person to assist in the investigation.	Appointment of interpreter.	Examining judge can appoint an interpreter. During court session suspect has the right to an interpreter. During interrogation of the police, the police are responsible for providing an interpreter.
<b>6b. Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b>	No.	Yes, in practice.	No, but a suspect has to be questioned by the police in an appropriate language. When an interpreter is not available within 6 hours, questioning can take place with interpretation by telephone.
<b>6c. Is there a scheme for recruiting qualified translators/ interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?</b>	Yes, interpreters and translators are appointed by the Ministry of Justice. Qualifications vary per sector, but the Ministry of Justice demands a diploma.	No, but the police have their own list of interpreters available.	Not yet, in 2005 an independent quality agency has to administer a record of certified interpreters, develop a rule for complaints and guarding the quality of the interpreters.
<b>6d. Are interviews and interpretation of questions and replies tape- or video recorded? System to verify quality and accuracy of translation/ interpretation?</b>	No.	Yes.	No, and no system for verification.
<b>6e. What mechanisms exist to ensure foreign suspects understand the proceedings and what they are accused of from a legal point of view?</b>	The suspect is informed, in an appropriate language, of certain procedural rights. The lawyer and the interpreter ensure that the suspect understands the proceedings.	Ultimately, Court control.	Ministry of Justice has brochures with explanation of the procedure in a number of languages.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Poland	Portugal	Slovak Rep.
<b>6a. What provisions exist for interpretation of questions and translation of relevant documents?</b>	Interpreter is appointed, who also translates relevant documents (orally). Accused will receive written translation of order on presentation of charges, their supplementation or change and judgments subject to an appeal or ending the proceedings.	All proceedings are in Portuguese. If a suspect doesn't know Portuguese, an interpreter will be assigned, free of cost. Interpreters are also asked to translate documents, which are not accompanied by an authenticated translation.	--
<b>6b. Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b>	No, but it is not possible to interrogate the suspect in absence of an interpreter.	No.	Yes, these interpreters are police officers, who have to interpret the charges and other demands from the suspects. Covered languages: English and German.
<b>6c. Is there a scheme for recruiting qualified translators/ interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?</b>	Not a specific scheme, but there is a list of sworn interpreters available for the prosecutors. Qualifications: Polish nationality; at least 25 years old (when specialised in interpretation for deaf persons: 21); appropriate interpretation/translation skills; university degree.	Assessment of the interpreter is undertaken by the appropriate judicial authority. No system of qualifications.	No specific scheme. There is a list of official (court) interpreters which is at every regional court. These interpreters are not members of the police force. 27 languages are covered.
<b>6d. Are interviews and interpretation of questions and replies tape- or video recorded? System to verify quality and accuracy of translation/ interpretation?</b>	Not common practice, see 5b. Chief Justice of the court (or an authorised court clerk) will verify the quality and accuracy of the translation/interpretation.	Yes, but not common practice. Oral statements are documented on a record sheet. No system of verification.	--
<b>6e. What mechanisms exist to ensure foreign suspects understand the proceedings and what they are accused of from a legal point of view?</b>	Prosecutor issues a decision on appointment of an interpreter, immediately after it has come to light that the suspect has no command of the Polish language. Interpreter will assist the suspect throughout the entire proceedings.	-- This assessment is for the judicial authorities.	--

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Spain	Sweden	England & Wales
<b>6a. What provisions exist for interpretation of questions and translation of relevant documents?</b>	If the suspect does not understand Spanish, an interpreter will be appointed. When it is impossible to find an appropriate interpreter, the questioning will be in writing and translated by the Language Interpretation Office.	When there is risk of confusion of languages, an interpreter assists in the interview. There are acts protecting minority languages that give inhabitants in certain regions in Sweden a right to use their native language vis-à-vis e.g. police authorities.	An interpreter will be assigned, when - the suspect has difficulty speaking English; and - the interviewing officer cannot speak the suspect's language; and - the suspect wishes an interpreter to be present.
<b>6b. Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b>	Yes, but only with regard to English, French, German and Arabic.	Yes, it's possible to contact an interpreter on a 24-hour basis through an interpreter agency. Schemes vary per police authority.	-- Individual police forces are responsible for identifying interpretation services to fulfil the requirements under PACE.
<b>6c. Is there a scheme for recruiting qualified translators/ interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?</b>	Yes, a scheme for signing permanent contracts with qualified translators both at courts and at police stations where suspects who do not know Spanish are questioned.	No. No special qualifications required.	NRPSI and CACDP or other recognised lists. Both require academic qualifications or proven experience of interpreting within the criminal justice system and professional accountability.
<b>6d. Are interviews and interpretation of questions and replies tape- or video recorded? System to verify quality and accuracy of translation/ interpretation?</b>	No, quality and accuracy of interpretation/ translation is guaranteed by the high level of knowledge of the language required from the translators and interpreters, who are selected by open public tender.	No, no specific rules. No system for verification.	No common practice. If it is taped, it must be done within the requirements of PACE. During the interview the interpreter makes notes of everything that is said. The suspect can read this transcript and sign it or can indicate when he thinks it is inaccurate.
<b>6e. What mechanisms exist to ensure foreign suspects understand the proceedings and what they are accused of from a legal point of view?</b>	--	See 6a-6d.	Investigating agency will arrange a free interpreter for any part of the investigation. Court appoints a free interpreter to assist at trial.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Scotland
<b>6a. What provisions exist for interpretation of questions and translation of relevant documents?</b>	--
<b>6b. Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b>	Yes, police forces have access to an interpreting service on a 24-hour, 365 a year basis.
<b>6c. Is there a scheme for recruiting qualified translators/ interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required?</b>	Variety of differing arrangements for the provision of translating and interpreting services; Service Level Agreements with providers. Diploma in Public Service Interpreting is required.
<b>6d. Are interviews and interpretation of questions and replies tape- or video recorded? System to verify quality and accuracy of translation/ interpretation?</b>	Dependent on availability of facilities and officers trained in the techniques.
<b>6e. What mechanisms exist to ensure foreign suspects understand the proceedings and what they are accused of from a legal point of view?</b>	Each police force has a procedure manual detailing procedures for interviewing foreign nationals.

## RIGHT TO TRANSLATION (AND INTERPRETATION)

Member State	Austria	Belgium	Cyprus
<b>8a. What provisions exist for interpretation or signing during the trial, when the defendant cannot follow proceedings, due to language difficulties or deafness?</b>	Deafness and dumbness: interpreter knowledgeable on sign language must be appointed, or proceedings will be in writing or other suitable way. Language difficulty: interpreter will be called in for all main hearings. When difficulty only becomes apparent during the hearing, the hearing will be adjourned until an interpreter is consulted.	There is no difference between interpretation into sign language and other languages.	Specialised interpreters will be assigned by the Court.
<b>8b. Where there is a prima facie language difficulty, who makes the assessment whether the defendant is capable of following the proceedings without assistance?</b>	Judge (Court).	The Court which handles the case.	The judge.
<b>8c. What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</b>	See 8a, 7c and 6a	The foreign suspect can use the language of his choice for all his statements. If the authorities do not know this language, the assistance of a translator/ interpreter is asked.	Judge will ask the defendant if he understands the language used at trial. If not appropriate, qualified interpreters will be assigned.
<b>7c. If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b>	Defendants who do not have adequate knowledge of the language of the court, must be assisted by translator. Indictment and petition for sentence will always be translated. Proceedings before courts with jury: min. 8 days to prepare defence. Courts with lay judges or a single judge: 3 days to prepare.	Relevant documents (records, witness or own statements and expert reports) can be translated into Dutch, French or German on state's costs. No time limit indicated. No specific provisions for translation into other languages.	Documents will be translated orally. No specific time limits are indicated: accused shall have adequate time and facilities to prepare his defence.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Czech Rep.	Denmark	Estonia
<b>8a. What provisions exist for interpretation or signing during the trial, when the defendant cannot follow proceedings, due to language difficulties or deafness?</b>	See 6a.	General rules apply, no specific rules for deaf defendants.	A person proficient in the form of expression of a deaf/mute person shall be summoned to the questioning of such a person.
<b>8b. Where there is a prima facie language difficulty, who makes the assessment whether the defendant is capable of following the proceedings without assistance?</b>	Competent agency involved in the criminal proceedings.	The judge.	First the defendant himself, then the judge. Experts can be engaged in case of difficulties.
<b>8c. What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</b>	See 6a.	There are no formal rules to ensure that the defendant understands the proceeding and what he is charged for. Estimation is made on basis of all available information.	The interpreter/ translator is warned by the judge of his liability in case of refusal of performing his duty or knowingly false interpretation/ translation.
<b>7c. If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b>	See 6a.	No specific indications about translation of documents. No formal time limits. General concept of the right to a fair trial (art. 6 (§3b) grants the defendant adequate time and facilities to prepare his defence.	Preliminary investigator shall append a translation to the summary of the charges. Time limits are sufficient to prepare the defence.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Finland	France	Germany
<b>8a. What provisions exist for interpretation or signing during the trial, when the defendant cannot follow proceedings, due to language difficulties or deafness?</b>	A translator/ interpreter is provided on state's expenses if needed.	Deaf suspects are assisted by interpreters who are knowledgeable on sign language or are communicated with through writing or other means suitable.	Deaf/mute suspects will be assisted by an interpreter knowledgeable on sign language. Also experts will be involved in the proceedings. Written communication is also possible. Not the entire proceedings are translated, only the relevant parts and the statements of the defendant. Applications for assignment of official defence counsel file by deaf or mute defendants will always be granted.
<b>8b. Where there is a prima facie language difficulty, who makes the assessment whether the defendant is capable of following the proceedings without assistance?</b>	Assistance is available on request.	The judge.	Investigating officer or judge.
<b>8c. What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</b>	See 6.	The judge has to ensure that the defendants can follow the proceedings by appointing an interpreter. The interpreters have to be at least 21 years old and have to take an oath.	See 8a.
<b>7c. If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b>	Documents can be translated and an interpreter is provided on state cost for the hearings and the trial. No time limit indicated.	Documents are translated on the defendant's request. No time limit indicated.	Relevant documents will be translated. No particular time limits. Translated documents should be made available to the suspect at the same time the documents would have been made available to a suspect who knows German.



## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Greece	Hungary	Ireland
<b>8a. What provisions exist for interpretation or signing during the trial, when the defendant cannot follow proceedings, due to language difficulties or deafness?</b>	No explicit provision of assistance by an interpreter during trial. Deaf or mute suspects however will receive special treatment, due to their 'challenged state'.	See 1c.	Court Service will arrange and pay for an interpreter to attend when a defendant cannot follow proceedings due to language or hearing difficulties. Sequential translation is used.
<b>8b. Where there is a prima facie language difficulty, who makes the assessment whether the defendant is capable of following the proceedings without assistance?</b>	No special provision.	The authority/the court. However such consideration is irrelevant, since the right to use one's mother tongue is absolute.	Garda Sióchana (police) or legal representative. In case of dispute, presiding judge will decide.
<b>8c. What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</b>	No special mechanism, general rules apply.	See 1c and the suspect is asked to make a declaration about whether he has understood the charges and other important points.	Defendant and/or counsel has to inform the court of any difficulties, but the judge can also appoint an interpreter on his own initiative.
<b>7c. If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b>	See 6a.	See 6a.	Every defendant is entitled to trial in due course of law, which includes translation of relevant documents. No express time limits indicated.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Italy	Latvia	Lithuania
<b>8a. What provisions exist for interpretation or signing during the trial, when the defendant cannot follow proceedings, due to language difficulties or deafness?</b>	See 6.	For interrogation of deaf/dumb defendants, a person understanding sign language shall be invited. The interpreter has to interpret the proceedings, the contents of the announced documents, contents of directions given by the chairman of the court and contents of the court resolution.	Participation of a defence lawyer is required. Suspect is entitled to use services of an interpreter/ translator. If the suspect is deaf/dumb a person who understands deaf/dumb language will be appointed.
<b>8b. Where there is a prima facie language difficulty, who makes the assessment whether the defendant is capable of following the proceedings without assistance?</b>	Prosecuting authority, possibly following notification by the interested parties.	--	The accused is asked if he needs the assistance of an interpreter/ translator if it is apparent that he has language difficulties.
<b>8c. What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</b>	See 6.	No special mechanisms.	Obligatory appointment of a defence counsel and entitlement to use the services of an interpreter/ translator.
<b>7c. If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b>	Documents are translated. No specific time limits.	See 6a and 6b. After the indictment (with translation) is given to the suspect, the prosecution can only start after 3 days.	Documents which are supplied to the defendant must be translated. When examining the materials of the case, the suspect may use the services of an interpreter/ translator. No specific time limit is provided.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Luxembourg	Malta	Netherlands
<b>8a. What provisions exist for interpretation or signing during the trial, when the defendant cannot follow proceedings, due to language difficulties or deafness?</b>	If the deaf/mute suspect cannot read or write an appropriate interpreter will be assigned to assist the suspect.	An official interpreter.	Questioning and answering will be in writing, when it concerns a deaf/mute suspect.
<b>8b. Where there is a prima facie language difficulty, who makes the assessment whether the defendant is capable of following the proceedings without assistance?</b>	The president of the Court.	The Court.	Court, but prosecutor may summon the interpreter before the trial has started.
<b>8c. What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</b>	See 8a.	Court control.	The right to an interpreter and the actual provision of an interpreter.
<b>7c. If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b>	--	--	Only the summons will be translated, other documents have to be translated by the lawyer or an interpreter.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Poland	Portugal	Slovak Rep.
<b>8a. What provisions exist for interpretation or signing during the trial, when the defendant cannot follow proceedings, due to language difficulties or deafness?</b>	An interpreter (on sign language) will be appointed. Defence counsel is mandatory and will be appointed ex officio, when suspect has not chosen his own defence counsel.	When the suspect is deaf/mute, a suitable sign-language, lip-speaking or writing interpreter will be appointed; or questions are posed orally and mute suspect answers in writing. Lack of an interpreter implies an adjournment of the proceedings.	-- Language difficulties are solved by the provisions in the Code of Criminal Procedure.
<b>8b. Where there is a prima facie language difficulty, who makes the assessment whether the defendant is capable of following the proceedings without assistance?</b>	Prosecutor, prior to the first hearing.	Judiciary authority presiding over the proceedings in question.	Respective body active in the criminal procedure.
<b>8c. What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</b>	Participation of an interpreter and mandatory (ex officio) defence counsel, who are obliged to be present at each hearing.	See 8a and 8b.	--
<b>7c. If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b>	Accused will be notified of date of hearing at least 7 days in advance. Until then, he should receive all documents relating to the preliminary proceeding. Translation of those documents is obligatory.	See 6.	--

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Spain	Sweden	England & Wales
<b>8a. What provisions exist for interpretation or signing during the trial, when the defendant cannot follow proceedings, due to language difficulties or deafness?</b>	If the suspect is deaf the questions will be put in writing, if he does not know how to write, a signer will be appointed.	If the person to be heard has a serious hearing or speaking impediment, an interpreter will be engaged. Interpreters have to be completely independent.	Court appoints the appropriate language interpreter or signer.
<b>8b. Where there is a prima facie language difficulty, who makes the assessment whether the defendant is capable of following the proceedings without assistance?</b>	The judge.	The Court.	Solicitors will bring the language difficulty of the suspect to the attention of the court administration.
<b>8c. What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</b>	See 8a and 8b.	See 8a and 8b.	Judge must see to it that proper means are taken to communicate to the deaf/dumb accused.
<b>7c. If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b>	Prosecution documents are translated. Time limits only begin once the documents have been translated.	If required, the court may provide for translation of documents filed with or dispatched from the court (applies also to Braille and v.v.). The court is obliged to translate documents, when it is sent to a person abroad and the court has reason to believe that he doesn't understand the language in the document.	Prosecution documents are translated on the defendant's request. General time limits apply.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Scotland
<b>8a. What provisions exist for interpretation or signing during the trial, when the defendant cannot follow proceedings, due to language difficulties or deafness?</b>	Scottish Court Service (SCS) is responsible for the appointment of a suitable interpreter. When a sign language interpreter is required the SCS would secure the services of one who is registered with the Scottish Association of Sign Language Interpreters.
<b>8b. Where there is a prima facie language difficulty, who makes the assessment whether the defendant is capable of following the proceedings without assistance?</b>	The Court.
<b>8c. What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</b>	The court has to ascertain via the interpreter that the accused understands the proceedings.
<b>7c. If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b>	Prosecution translates what it considers the accused will need for a general understanding of the nature of the charge. Counsel will receive the details.

### SPECIFIC ATTENTION FOR VULNERABLE SUSPECTS

Member State	Austria	Belgium	Cyprus
<b>1a. Is there in your national legal system a mechanism for identifying suspects, belonging to 'vulnerable groups'? How is such identification made? Is professional guidance sought in making this identification?</b>	'Identification' of 'vulnerability' depends on information provided by the suspects and on the perceptions of the court. Experts will be involved, when judge lacks adequate experience. In case of mental illness, a medical specialist has to be consulted.	No, but nevertheless there are special measures applicable for certain groups of suspects.	No, but certain provisions dealing with the subject in various legal texts. Court can order investigation to identify mental condition of suspect.
<b>1b. Which categories of vulnerable suspects exist?</b>	Non-exhaustive list: (1) Young people (14-18 years) and minors (-14 years) (2) No adequate knowledge of court's language (3) Mentally ill, deficient, disturbed, other equivalent serious psychological disturbance, or (temporarily) under the influence of a mental or psychological abnormality of the first degree (4) Blind, deaf, dumb or otherwise handicapped	(1) Minors (2) Mentally ill or disturbed persons	(1) Minors (under 7, no criminal liability; between 7 and 12 only liable if they had the capacity to know that they were doing something they shouldn't be doing) (2) Physically handicapped. (3) Mentally handicapped or insane
<b>1c. Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b>	Non-exhaustive list: (1) Special procedural rules. (2) Assistance of interpreter/ translator. (3) Hearing cannot be held, when the suspect is incapable of following the hearing due to physical or mental affliction. Other mental illness → defence counsel is obligatory at least during preliminary hearing and main hearing. (4) No indication whether there are special measures applicable for physically handicapped suspects.	(1) Special law applicable (8-4-1965): special procedures and special courts will judge the case. A procedure of reform is at the moment in course. (2) Special law applicable (9-4-1930): observations of suspects, placement under a restriction order, etc. Special committee (Commission de défense sociale) decides on interment of defendant.	Medical treatment in a medical centre or a psychiatric institution. Special medical or educational programmes or disciplinary institution. Persons can also be acquitted from prosecutions, but then they will be kept in a governmental medical centre or psychiatric institution.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Czech Rep.	Denmark	Estonia
<b>1a. Is there in your national legal system a mechanism for identifying suspects, belonging to 'vulnerable groups'? How is such identification made? Is professional guidance sought in making this identification?</b>	Only minors are identified as vulnerable suspects. No other professional guidance is sought to identify person as vulnerable.	Not as such, relevant information regarding the accused's personal circumstances is brought to the knowledge of the court. When suspect suffers from mental problems, thorough mental observation can be undertaken prior to judgment.	Yes, official conducting criminal proceedings must identify the suspect's age and physical and mental capabilities.
<b>1b. Which categories of vulnerable suspects exist?</b>	(1) Minor (between 15 and 18) Certain suspects are also granted additional rights, but they are not specified in the answer.	No such categories, but special consideration towards: (1) Persons under the age of criminal liability (15 years) (2) Minors (15-18 years) (3) Mentally ill (4) Persons with addiction	(1) Minors (2) Foreigners (3) Physically handicapped (4) Mentally handicapped
<b>1c. Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b>	Defence counsel is obligatory. Can only be taken into custody in exceptional circumstances. Child care authorities should be involved. Main hearing should be behind closed doors if necessary. Divergent punishments.	(1) Matter for social authorities. (2) Normal procedure, but 'youth sanction'; max. 8 years in prison; 'youth contract'; involvement of social authorities. (3) Depends on state of mental illness person is not punishable, treatment or other legal measures will follow. (4) Treatment, activation/ supervision as a condition for a provisional sentence, if the crime is not of very serious nature.	Defence counsel is obligatory. (1) Minor can be placed under supervision of his parents/guardians or childcare institutions. Supervisor has to give a written commitment that the minor will appear in court and ensure his good conduct.



## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Finland	France	Germany
<b>1a. Is there in your national legal system a mechanism for identifying suspects, belonging to 'vulnerable groups'? How is such identification made? Is professional guidance sought in making this identification?</b>	Courts are allowed to examine the mental state of the person which examination is conducted in mental hospital.	No specific identification. In general persons can be considered vulnerable due to their age or their handicap.	Yes, anthropological or medical reports with regard to the age of a defendant or mental state. Experts and defence counsel are heard.
<b>1b. Which categories of vulnerable suspects exist?</b>	(1) Minors (under 15 years) (2) Insane persons (3) Temporarily deranged persons (4) Persons not in full possession of mental faculties	(1) Minors, three groups (A) 10-13 years (B) 13-16 years (C) 16-18 years (2) Handicapped persons (particularly deafness)	(1) Juveniles (14-18 years) (2) Young adults (18-21 years) Children under 14 are not criminally liable. (3) Persons with disabilities (language or hearing difficulties) (4) Foreign nationals
<b>1c. Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b>	Criminal liability either does not apply at all or in measuring the sentence certain deductions apply. Court can order a person to be taken into a mental hospital for treatment.	(1) Parents/guardians are notified, medical examination, right to consult lawyer if detained. Questioning always tape/video recorded.(A) Can be held for 10h (max. 20) for a crime punished by min. 7 years in prison.(B) Can be held for 24h (max. 48) for a crime punished by min. 5 years in prison.(C) Can be held for 24h (max. 48). (2) Assistance of sign language interpreter or other way of comm.	Accused can be observed in a public psychiatric hospital for max. 6 weeks (on court order). (1) Special courts and judiciary. Parents/ guardians informed, proceedings not public. Special concern about juvenile's social and educational development. Normally those under 16 are not held on remand. (3+4) Generally medical assistance and guarantee that the defendant can follow the proceedings.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Greece	Hungary	Ireland
<b>1a. Is there in your national legal system a mechanism for identifying suspects, belonging to 'vulnerable groups'? How is such identification made? Is professional guidance sought in making this identification?</b>	No formal identifying mechanism. However special criminal law provisions apply concerning minors and persons using drugs and other psychotropic substances.	No specific identification mechanism. Authorities can always request for expert's opinions. Physically handicapped suspects are immediately medically examined.	--
<b>1b. Which categories of vulnerable suspects exist?</b>	(1) Minors (2) Persons suffering from drug addiction	(1) Minors (between 14 and 18) (2) Deaf, mute, blind (3) Mentally ill (4) Does not speak the language of the proceedings (5) Incapable of defending himself in person	(1) Minors (under 18 years) (2) Mentally handicapped persons Other vulnerable groups are not specifically identified, but each individual's constitutional rights must be upheld and everyone is entitled to a fair trial.
<b>1c. Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b>	(1) Special police units deal with minors. Juvenile courts have been created to provide welfare for minors on the one hand and justice on the other. (2) No particular procedural safeguards exist by law. However the court has to take into account expert's reports submitted by psychiatrists and other physicians. Person can be treated in a special therapeutic establishment.	Defence counsel is compulsory in all cases and if necessary an interpreter will be provided.	(1) Children Act, 2000. Special courts, apart from normal sittings. Questioning will always be done in the presence of another adult. (2) Questioning only in presence of a responsible adult.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Italy	Latvia	Lithuania
<b>1a. Is there in your national legal system a mechanism for identifying suspects, belonging to 'vulnerable groups'? How is such identification made? Is professional guidance sought in making this identification?</b>	Yes. For minors there is an assessment procedure (expert report).	--	No specific definitions, but many legal provisions which aim to ensure the rights of vulnerable persons and to provide them with guarantees.
<b>1b. Which categories of vulnerable suspects exist?</b>	(1) Minors (2) Disabled people (e.g. deaf, mute and deaf-mute) (3) People unable to consciously take part in the trial, due to physical and mental disabilities	--	(1) Minors (2) Physically handicapped (3) Mentally handicapped (4) Persons lacking knowledge of Latvian language
<b>1c. Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b>	(1) Special procedural rules. (2) Special types of assistance. (3) Criminal proceedings may be suspended and a special guardian appointed, although decisions to prosecute may still be taken.	--	(1) Representatives of the minor may take part in the proceedings (e.g. parents/guardians). Defence lawyer is required. Special procedural rules apply. Prohibition of publication of data obtained during pre-trial investigations. (2) Defence lawyer is required. (4) Defence lawyer is required. An interpreter/translator will be involved in the proceedings.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Luxembourg	Malta	Netherlands
<b>1a. Is there in your national legal system a mechanism for identifying suspects, belonging to 'vulnerable groups'? How is such identification made? Is professional guidance sought in making this identification?</b>	No.	Social workers. It is not indicated in the answer whether there exist a mechanism of identification.	Court decides whether a suspect is to be considered vulnerable. Court can ask for a closer investigation.
<b>1b. Which categories of vulnerable suspects exist?</b>	--	Juveniles Drug addicts	(1) Minors (2) Deaf or blind people (3) People who are mentally ill and not able to understand the proceedings
<b>1c. Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b>	Special law concerning minors (10-08-1992).	Presence of social workers.	(1) Juvenile court. (2) Measure to help them understand the proceedings (see question 8). (3) Court session will be adjourned (after expert medical advice).

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Poland	Portugal	Slovak Rep.
<b>1a. Is there in your national legal system a mechanism for identifying suspects, belonging to 'vulnerable groups'? How is such identification made? Is professional guidance sought in making this identification?</b>	Authority that conducts the proceedings relies on experts' opinions delivered on his demand.	No.	--
<b>1b. Which categories of vulnerable suspects exist?</b>	(1) Minors (between 13 and 17) (2) Physically handicapped persons (3) Persons with respect to whom there is a good reason to doubt their sanity	(1) Minors (under 21) (2) Deaf and/or mute people (people with hearing impairments) (3) Illiterate people (4) People, unable to speak Portuguese	(1) Juveniles (2) Physically or mentally handicapped (3) Person who cannot speak the language of the proceedings.
<b>1c. Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b>	For all categories an (ex officio) defence counsel is obligatory. (1) Special procedural rules, specific legislation on criminal liability of juveniles who are 17 years (in some cases as from 15 years). (3) Level of sanity has to be established by expert psychiatrists.	(1) Persons under 16 are not obliged to answer allegations. Special regime for minors between 15 and 21. (2) Suitable sign language or lip speaking or a note taking interpreter; a mute person can write his answers. Lack of interpreter implies adjournment of the proceedings.	(1) Some minors are not criminally liable. Special procedural rules in proceedings involving a juvenile suspect. General aim is to guarantee the educational purpose of the proceedings. (2) Mandatory defence counsel. Right to a legal representative to represent the suspect in all kinds of procedural acts. (3) Interpreter is assigned.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

Member State	Spain	Sweden	England & Wales
<b>1a. Is there in your national legal system a mechanism for identifying suspects, belonging to 'vulnerable groups'? How is such identification made? Is professional guidance sought in making this identification?</b>	No. In practice suspects who are considered vulnerable will be treated in a special way.	Only minor offenders are identified.	Yes. Police custody officer has to identify vulnerable persons when processing people into custody.
<b>1b. Which categories of vulnerable suspects exist?</b>	No specific categories. However, language difficulties and deafness are dealt with in a specific way.	Minors (under 21)	(1) Juveniles (under 17) (2) Mentally handicapped, suffering from a mental disorder (3) Deaf, doubtful hearing or speaking ability or ability to understand English (4) Blind, seriously visually handicapped or unable to read (5) Foreign nationals
<b>1c. Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b>	See question 8.	Special courts and judiciary. Preliminary investigations wound up within 6 weeks from charge. Trial within 2 weeks of initiating prosecution. Notification parents/guardians; who should be present at the juvenile's questioning. Notification Social Welfare Committee, which advises if minor should be prosecuted. Those under 18 can only be arrested on special grounds.	(1+2) Notification parents/guardian; can assist/advise the arrested person privately and be present during interview. Juvenile is never detained with an adult. In case of mental disorder, police surgeon must be called. (3) Interview is tape recorded and written in verbatim (interpreter's assistance is obligatory). (4) Arrested person is assisted by appropriate person. (5) Consular assistance.

## Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union

<b>Member State</b>	Scotland
<b>1a. Is there in your national legal system a mechanism for identifying suspects, belonging to 'vulnerable groups'? How is such identification made? Is professional guidance sought in making this identification?</b>	Yes, only minors and mentally disordered persons.
<b>1b. Which categories of vulnerable suspects exist?</b>	(1) Minors (2) Mentally disordered persons
<b>1c. Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b>	(1) Age of Legal Capacity (Scotland) Act 1991: minors (under 16) generally allowed to instruct solicitor. Legal aid is automatically available. (2) Appropriate, completely independent adult, with expertise in dealing with mentally disordered people is present during interviews (for support and reassurance to the suspected person and to facilitate communications).

### **3. Analysis of the Outcome of the Questionnaire per Member State**

To analyse the outcome of the questionnaire, the responses will be compared with the desired level of implementation as stipulated in the Proposed FD. It will be mentioned when a Member State fails to comply with or exceeds the proposed provisions. If such an analysis cannot be made, this will also be indicated.

For simplicity's sake, the male pronoun "he" is used throughout. In this context, this should be taken as gender neutral, since all the information clearly applies equally to female suspects and defendants.

#### **AUSTRIA**

##### *The right to legal advice, including the level of legal aid*

Regarding the right to legal advice, Austrian law in general seems to comply with the desired level of implementation of the Proposed FD. It is not clear, however, whether the lawyer may be consulted prior to the police interview as provided in Art. 2 § 2 of the Proposed FD. The lawyer is not allowed to be present during the police interrogation. Legal assistance is obligatory when the suspect is in custody or considered vulnerable, which partly complies with Art. 3 Proposed FD.

A system of granting free legal aid is provided for indigent suspects. Assigned lawyers receive a remuneration of € 182,00 per case.

##### *Right to interpretation and translation*

Assistance of an interpreter and translator is provided, also for deaf and mute defendants. It is not mentioned whether this assistance is free of charge for the suspect and what kind of rules apply during the pre-trial investigation. It therefore remains unclear whether the provisions comply with Art. 6 § 2 of the Proposed FD stating that a person has the right to receive free interpretation of legal advice received throughout the criminal proceedings. The indictment and petition for sentences will be translated, other relevant documents are not mentioned in the answers, so it is not clear whether all relevant documents are translated as required in Article 7 of the Proposed FD. A list of sworn and certified interpreters must guarantee the quality of the interpretation, so Art. 8 of the Proposed FD seems to be complied with. The interviews are not audio nor video recorded, as stipulated in Article 9 of the Proposed FD.

##### *Right to specific attention for vulnerable suspects*

Juveniles, minors, persons with language difficulties, mentally and physically handicapped are considered vulnerable and in need of specific attention. This complies with the Proposed FD. Corresponding procedural measures, as mentioned in Art. 10 and 11 of the Proposed FD, cannot be found in the responses.

##### *Right to communication and / or consular assistance and 'Letter of Rights'*

Austria does not mention the right to communication/consular assistance as provided in Art. 12 and 13 of the Proposed FD.

Most courts have a form which translates the caution into the commonly encountered languages, which upon the examining judge's responsibility is submitted to the defendant in the appropriate language. This form could be considered a simplified "Letter of Rights" which does not cover all the procedural rights as stipulated in Art. 14 of the Proposed FD. Furthermore, the suspect has to be notified of his rights prior to the first interview by the police, but the response does not show whether this is done orally or in writing.

#### **BELGIUM**

##### *The right to legal advice, including the level of legal aid*

Belgian law does not entirely comply with the proposed provisions regarding the right to legal advice. The suspect has the right to choose a lawyer but only from the moment the examining judge wants to proceed with the arrest. This seems to imply that the legal advice is not provided as soon as possible after arrest and certainly not before the first interview, as provided in Art. 2 § 2 Proposed FD.



However, during the first interrogation before the examining judge, the suspect is entitled to free legal assistance. The lawyer is not allowed to be present during police interview. There is no emergency scheme, which implies that legal advice is not available at the beginning of the proceedings for suspects who are not able to pay or choose a defence counsel.

A system of granting free legal aid is in place. Suspects have to prove their indigence and lawyers are remunerated according to a point system. The level of remuneration is not specified in the response so it remains unclear to what amount the costs of legal aid are covered.

*Right to interpretation and translation*

Free assistance of an interpreter and a translator is provided for all persons who do not understand the language of the court and for persons with hearing impairments. There is no emergency scheme for linguistic assistance. Relevant documents are only translated for free into Dutch, French and German. The interviews are not audio or video recorded, nor is there a system to verify the accuracy of the interpretation and translation. Furthermore, interpreters and translators do not have to meet certain qualifications. This implies that the quality of the interpreters and translators cannot be guaranteed and that the proposed provisions in Art. 6 § 2, Art. 8 and Art. 9 of the Proposed FD are not met.

*Right to specific attention for vulnerable suspects*

Only minors and mentally ill or disturbed persons are considered vulnerable. Interviews with minors are recorded. Other special measures as proposed in the Proposed FD cannot be recognised in the response.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## **CYPRUS**

*Right to legal advice, including level of legal aid*

Cyprian law generally complies with the right to legal advice, since the suspect may choose a lawyer or have one assigned within reasonable time. It is not clear what exactly is meant with 'within reasonable time' and whether this corresponds with the phrase 'as soon as possible'. The lawyer may be present during police interview, which goes beyond the desired level of provisions in the Proposed FD.

It is not clear, however, whether legal advice is provided throughout the entire proceedings. The responses do not specify how legal assistance is arranged throughout the criminal proceedings.

A system of legal aid is provided. Suspects are obliged to inform the authorities of their financial situation. If legal aid is granted, the suspect may either choose his own lawyer or have one appointed. The Supreme Court defines the minimum and maximum level of expenses, which seems to imply that the costs of legal aid are covered only to a certain limit .

*Right to interpretation and translation*

An interpreter will assist the suspect during trial and also translates relevant documents orally. The latter does not comply with the proposed provisions prescribing free interpretation of legal advice and free translation of relevant documents in Art. 6 § 2 and Art. 7 of the Proposed FD.

Other proposed provisions are (partly) met. Suspects with language difficulties or hearing impairments will be assisted by a specialised interpreter. Emergency linguistic assistance on a 24-hour basis is provided by qualified police interpreters. It is not clear whether these interpreters are independent or employed by the police. Court interpreters have to be approved by the court, depending on their fulfilment of the relevant legal requirements. The interviews are only recorded in writing and not audio or video recorded as proposed in Art. 9 of the FD. A verification system is provided by law and the court may test the ability of the interpreter.

*Right to specific attention for vulnerable suspects*

Minors and physically and mentally handicapped are considered vulnerable, which complies with the proposed provisions. These suspects receive specific attention, but the special measures as described in the Proposed FD are not mentioned.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## **CZECH REPUBLIC**

*Right to legal advice, including level of legal aid*

Regarding the right to legal advice, Czech law on the average seems to comply even beyond the desired level of implementation with the Proposed FD. The suspect has the right to choose his lawyer or have one appointed from the beginning of the proceedings. The responses given by the Czech authorities imply that the lawyer should be present during the entire proceedings, even during police interrogations which exceeds the desired level of provisions in the Proposed FD.

However, there is no scheme for 24-hour emergency assistance, which means that representation during the first phase of the criminal proceedings is only guaranteed if the suspect asks for assistance of a lawyer. A confession is no admissible evidence when the suspect has been denied a lawyer to be present during the interrogation. Legal assistance is compulsory when the person is in custody, or when he has allegedly committed a criminal offence which is subject to severe punishment or in case of minor suspects.

If a suspect can prove that he is indigent, legal aid is granted. Depending on the financial situation of the suspect, legal aid is completely or partially covered by the State. Remuneration for legal assistance is based on fixed fees. The level of remuneration is not specified in the response.

*Right to interpretation and translation*

The response does not mention the right to interpretation so it remains unclear whether Art. 6 of the Proposed FD is met. There is no emergency scheme for linguistic assistance. Relevant documents are translated and submitted to the suspect in writing. A national register of legal interpreters and translators is administered by the Ministry of Justice. The latter does raise some doubt concerning the independence of the interpreters and translators. Only these qualified interpreters and translators can act in criminal proceedings. Consequently, the quality of the interpreters and translators is carefully monitored and seems to be in accordance with Art. 8 of the Proposed FD.

It is no common practice to audio or video record the interviews, but it is possible. Partial compliance with the prescribed quality control of Art. 9 of the Proposed FD can be found in the fact that if the verbatim language of the testimony is significant, the recording clerk or the translator mentions in the record the corresponding part of the testimony in that language too. There is no separate system of verification other than the abovementioned register.

*Right to specific attention for vulnerable suspects*

Only minors are identified as vulnerable, which partially complies with the proposed provisions. The response mentions that other categories of suspects exist, which are granted additional rights, but these categories are not specified in the answer. The special measures as described in the Proposed FD cannot be recognised in the Czech responses.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## **DENMARK**

*Right to legal advice, including level of legal aid*

In general, the system of legal assistance and legal aid in criminal proceedings in Denmark exceeds the required level of the Proposed FD. The suspect is entitled to have a lawyer assigned by the court,

when he is charged with a crime sanctioned with more than a fine. The lawyer has to be assigned without undue delay, which may be considered to be comparable with 'as soon as possible'. Since the lawyer is entitled to be present during questioning, he has to be assigned before the questioning takes place. This seems to imply that the lawyer can be consulted before the interrogation. Furthermore, emergency assistance is offered on a 24-hour basis. This implies that the lawyer is present throughout the proceedings.

The legal aid system is not based on the financial situation of the suspect, but on the assignment of the lawyer. If the State assigns a lawyer, the State will initially cover the costs of legal aid. However, if the suspect is found guilty, the State can claim reimbursement of the costs from the convicted person. It is not specified whether costs of legal assistance are restricted to a certain level or are covered completely, except that costs exceeding necessary costs are not reimbursed.

#### *Right to interpretation and translation*

The provisions regarding free translation and interpretation in the Proposed FD are partly complied with. Linguistic assistance is available for persons who do not speak Danish and for persons with language difficulties or hearing impairments. There is no emergency scheme, but the National Commissioner of Police administers a list of 1850 authorised interpreters, representing 140 languages and dialects. With this list, the quality of the interpreters and translators is monitored. The interviews are not audio or video recorded. Complaints about the interpretation or translation can be filed to the local police authority. However, this cannot be considered a genuine system to verify the quality and accuracy of the linguistic assistance.

Relevant documents will be translated, but there are no formal time limits within which these documents have to be submitted to the defendant.

#### *Right to specific attention for vulnerable suspects*

Specific attention is given to persons under the age of criminal liability (15 years of age), minors, mentally ill persons and addicted persons. Physically handicapped are not granted specific attention. The special measures as proposed by the EC cannot be recognised in the Danish response. Hence, on this matter only partial compliance is provided.

#### *Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## **ESTONIA**

#### *Right to legal advice, including level of legal aid*

The suspect is entitled to a lawyer within 24 hours from detention. It is questionable whether this is in accordance with the proposed provision of granting legal assistance as soon as possible. The lawyer has the right to be present during interrogation, which exceeds the proposed provision of Art. 2 § 2 of the Proposed FD. His presence is of legal significance to the evidential value of suspect's confessions: confessions made in absence of a lawyer are not admissible as evidence if the suspect has requested for a lawyer to be present. Because the suspect has the right to contact a lawyer from the moment of detention and the lawyer has unlimited access to the suspect to meet him in private, it can be assumed that the suspect can have access to his counsel prior to the questioning. It is however not clear whether a scheme of emergency legal assistance is provided, which makes it difficult to assess whether legal assistance is effectively available during the pre-trial proceedings. A defence counsel is mandatory when it concerns vulnerable suspects or suspects charged with a criminal offence sentenced with life imprisonment. This largely complies with the provisions of Art. 3 Proposed FD.

Participation of a criminal defence counsel on State's expenses is ensured by the Estonian Bar Association (1) in case a defence counsel is mandatory or (2) when the suspect has requested for participation of a defence counsel, but does not have a counsel himself. It is not clear from the response whether the financial situation of the suspect is of any significance. It is only mentioned that in case of an acquittal, the costs shall be borne by the State. Remuneration is based on fixed hourly rates, dependent on the difficulty of the case. The court decides on the actual amount of remuneration.

*Right to interpretation and translation*

A person with language difficulties or speech or hearing impairments will be assisted by an appropriate interpreter or translator. There is no scheme for emergency linguistic assistance available. Neither the quality nor the accuracy of the interpretation and translation are guaranteed since there are no specific qualifications required nor is there a system of verification available. The interviews are not audio or video recorded, which makes it difficult to assess the accuracy of the interpretation in case of a dispute. The response to the questionnaire does not mention the translation of relevant procedural documents in great detail. A translation of the summary of the charges is submitted to the suspect.

In short, apart from the fact that an appropriate interpreter or a translator is assigned to assist the suspect, there is very little compliance with the proposed provisions in Art. 6-9 of the FD.

*Right to specific attention for vulnerable suspects*

In general, Estonian law complies with the provisions in the Proposed FD concerning vulnerable suspects. The official conducting the criminal proceedings is obliged to identify the suspect's age and his physical and mental capabilities. Minors, foreigners and physically and mentally handicapped are considered vulnerable. Specific attention to safeguard the fairness of the proceedings as described in the Proposed FD cannot be recognised in the response.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## **FINLAND**

*Right to legal advice, including level of legal aid*

The Finnish law complies with the proposed provisions in the FD concerning the right to legal advice. The suspect has the right to a counsel in all instances of the proceedings at all times, which implies that a counsel may also be consulted prior to questioning. The lawyer has the right to be present during questioning, which exceeds the proposed provisions. There is no emergency scheme for legal aid on a 24-hour basis, since legal aid offices operate only from 8.00 – 16.15 on weekdays. In criminal cases, however, suspects mostly refer to private attorneys.

Legal aid can be provided on State's expenses. It remains unclear whether the financial situation of the suspect is of any relevance. The system covers public legal aid offices and private attorneys. An assigned lawyer is paid € 252 for preparatory work (max. 3 h); € 118 for assistance in pre-trial investigations (max. 2 h); € 303 for procedures in court (max. 3 h). More work, if justified, pays € 84 an hour. Travel and waiting time will also be compensated. The court decides on the amount of remuneration.

*Right to interpretation and translation*

In Finland, the right to free interpretation is in accordance with the provisions of the Proposed FD, except for safeguards for the interpretation quality. Free linguistic assistance is offered to the suspect who has language difficulties or suffers from speech or hearing impairments. A scheme for emergency linguistic assistance is available covering all needed languages, which means that assistance is guaranteed throughout the entire proceedings. It is difficult to assess the quality of the interpreters and translators, since there are no special qualifications required. The interviews are always audio recorded and sometimes video recorded. A transcript of the audio tape will be offered to the suspect for verification and he is asked to sign it.

Also documents can be translated on State's expenses in accordance with Art. 7 of the Proposed FD.

*Right to specific attention for vulnerable suspects*

Minors and mentally ill persons are considered vulnerable. This only partially complies with the provisions of the Proposed FD. Corresponding procedural measures, as mentioned in Art. 10 and 11 of the Proposed FD, cannot be recognised in the responses.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

**FRANCE**

*Right to legal advice, including level of legal aid*

French law largely complies with the provisions as proposed in the FD. The suspect may have access to a lawyer as soon as possible after arrest and there is a scheme for emergency legal assistance organised by the Bar Associations. However, it is not clear whether the lawyer can be consulted prior to the police interview. He cannot be present during the interview.

Free legal aid is granted to indigent suspects. The application for legal aid will be reviewed by a special committee. The level of remuneration of the assigned counsel is not specified in the response, except that it is fixed by decree.

*Right to interpretation and translation*

The provisions of the Proposed FD on interpretation and translation are largely met. Suspects who do not understand the language of the court or who have speech or hearing impairments will be assisted by an appropriate interpreter. He will also interpret relevant documents. Documents are translated on the defendant's request. There is no scheme for emergency linguistic assistance. Nevertheless, linguistic assistance is granted throughout the proceedings. When the interpreter is not present, the procedural act will be declared void. In general, the interviews are not audio or video recorded and the suspect has to verify the accuracy of the interpretation himself. This does not comply with Art. 9 of the Proposed FD.

*Right to specific attention for vulnerable suspects*

In general, suspects can be considered vulnerable due to age or handicap (particularly deafness). Minors are divided in three groups according to their age. They will be medically examined. Interviews with minors are always audio and/or video recorded. Other corresponding procedural measures, as mentioned in Art. 10 and 11 of the Proposed FD, cannot be recognised in the responses. The foregoing implies only partial compliance with the proposed provisions.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

**GERMANY**

*Right to legal advice, including level of legal aid*

In general, German law complies with the proposed provisions in the FD on right to legal advice. After the suspect is charged, at the beginning of the first examination, he is notified of his right to consult a lawyer. He will have access to his lawyer throughout the entire proceedings, even prior to the examination. The lawyer can also be present during the questioning, if the suspect wishes so. The latter exceeds the proposed provisions. A scheme for emergency legal assistance on a 24-hour basis is available, but not yet everywhere in Germany.

When the suspect is not assisted by a counsel of his own choice and when the appointment of a defence counsel is mandatory, a defence counsel can be appointed by the court, irrespective of the suspect's financial or personal circumstances. A defence counsel is mandatory, when it concerns a serious offence or a difficult factual or legal situation or a physically or mentally handicapped suspect or when it is evident that the suspect cannot defend himself. It remains uncertain whether this system of appointment of a defence counsel entirely covers the categories mentioned in Art. 3 of the Proposed FD. Remuneration of an assigned counsel depends on the complexity and duration of the proceedings. The level of remuneration is not specified in the response.

*Right to interpretation and translation*

The suspect will be assisted by an interpreter and a translator if he does not understand the language of the court or if he has speech or hearing impairments. Not the entire proceedings are translated, only the relevant parts and the statements of the defendant. As long as this guarantees a fair trial, it complies with the Proposed FD. Interviews are always audio recorded (sometimes also video recorded). The response does not mention a system for verification. There are no special qualifications required.

Relevant documents are translated and submitted to the suspect within the same time limits as the original documents would have been made available. In conclusion: except for provisions concerning the quality of the translators and interpreters, the provisions of the Proposed FD are complied with.

*Right to specific attention for vulnerable suspects*

Juveniles and young adults, persons with disabilities and foreign nationals are considered vulnerable. Possible vulnerability will be assessed with anthropological or medical reports regarding the person's age and mental state. In general, vulnerable suspects are assisted by a lawyer and are medically examined. Interviews are always audio recorded. This generally complies with the Proposed FD.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## **GREECE**

*Right to legal advice, including level of legal aid*

In the main, Greek law complies with the provisions in the Proposed FD concerning access to legal advice since access to a lawyer is given in all stages of the proceedings from the moment the suspect is charged. The lawyer can be present during interrogation, which exceeds the provision in Art. 2 § 2 of the Proposed FD. There is no scheme for emergency legal assistance, which makes it difficult to ascertain whether legal assistance is effectively provided from the beginning of the proceedings.

Recent legislation provides for a generally applicable system of criminal legal aid. This system is not based on the suspect's financial or personal situation. The court or investigative authority can appoint a lawyer upon the suspect's request. The response to the questionnaire does not mention any additional circumstances that require the appointment of a lawyer. In so far, this system does comply with Art. 3 of the Proposed FD.

*Right to interpretation and translation*

The response is not very clear on this subject and it seems that the level of provision in the Proposed FD is only partly complied with. The investigative authority will assess whether the suspect has sufficient knowledge of the Greek language and relevant documents will be translated if necessary. The response does not refer to the verification of the accuracy of the translation and the required qualifications of interpreters and translators. There is no explicit provision of assistance by an interpreter during trial. Deaf and mute suspects will receive specific attention.

*Right to specific attention for vulnerable suspects*

Only minors and persons suffering from drug addiction are considered vulnerable, which does not in full comply with the proposed provisions. Corresponding procedural measures, as mentioned in Art. 10 and 11 of the Proposed FD, cannot be recognised in the responses.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## HUNGARY

### *Right to legal advice, including level of legal aid*

In general, Hungarian law complies with the proposed provisions on access to legal advice. The counsel has to be informed of all procedural acts and is able to consult his client before the first hearing at the latest. The counsel also has the right to be present during questioning, which exceeds Art. 2 § 2 of the Proposed FD. There is no scheme on emergency legal assistance, but if legal assistance is compulsory, the suspect cannot be questioned before a legal counsel is appointed. Assistance of a counsel is obligatory when the suspect is in custody or when it concerns a foreign suspect.

There is a system of granting legal aid on State's expenses. A counsel will be appointed when the suspect is in custody or when the suspect is not able to finance the costs of a defence counsel himself. This complies with the provisions in the Proposed FD. The counsel is paid an hourly fee of 2000 HUF (corresponding with € 8) whenever he has to be present during the proceedings. The counsel's travel and other reasonable costs are reimbursed.

### *Right to interpretation and translation*

The provisions prescribed in Art. 6-9 of the Proposed FD are largely met, except the provisions regarding the quality of the interpretation and translation and the audio or video recording. An interpreter will be appointed free of charge, if the suspect does not know the language of the court or if he suffers from speech or hearing impairments. A public authority translates all written documents and provides interpretation. The prosecutor or investigating authority will provide the suspect with translated decisions and other official documents. There is a list of qualified interpreters available, but if an official interpreter cannot be reached, anyone capable of interpretation can be appointed. The latter does not guarantee the quality of the interpretation. The interviews can be audio or video recorded, but the suspect has to initiate and pay for it himself. It is not clear from the response if there are provisions for indigent suspects in this respect.

### *Right to specific attention for vulnerable suspects*

Minors, physically or mentally handicapped, persons who do not understand the language of the court and persons who are incapable of defending themselves in person are considered vulnerable. Assistance of a defence counsel is obligatory and physically handicapped are immediately medically examined. Other ways of specific attention as described in Art. 10 and 11 of the Proposed FD, cannot be recognised in the response.

### *Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## IRELAND

### *Right to legal advice, including level of legal aid*

In general Irish law complies with the Proposed FD concerning the right to legal aid. The suspect will be informed of his right to consult and have access to a solicitor without delay. This implies that legal advice is provided 'as soon as possible'. It is not clear from the response whether legal assistance is provided throughout the entire proceedings or at least prior to the interrogation, although there is an emergency scheme for legal assistance. The defence counsel cannot be present during questioning. Free legal aid is granted to suspects who can prove their financial means are insufficient. Application for free legal aid has to be made to the court either in person or by letter. The level of remuneration of the assigned counsel is not specified in the response.

### *Right to interpretation and translation*

In general it is difficult to assess whether Irish legislation on this matter complies with the Proposed FD, because the answer is not very clear on most issues.

If a suspect cannot follow the proceedings due to linguistic problems, deafness or muteness, an interpreter will be appointed to him. During the investigation, an interpreter will only be provided when the police think it is necessary for the investigation, or because they need to explain something to the suspect. Hence, provision of an interpreter is not dependent on the suspect's needs, for instance for legal advice.

The interpreter is paid by the State. The response is unclear regarding the existence of a scheme on emergency linguistic assistance and whether the interviews are audio or video recorded. In general, interviews are audio or video recorded, which seems to imply that also the interviews with the assistance of an interpreter are electronically recorded. The response is not clear on the subject of verification. No specific qualifications are required of the interpreters.

Relevant documents are translated and submitted to the suspect within a sufficient time limit for him to prepare his defence. Exact time limits could not be given.

*Right to specific attention for vulnerable suspects*

Minors and mentally handicapped are considered vulnerable. They can only be questioned in the presence of a third person (for instance a parent or guardian). The interviews are audio or video recorded. This complies for the most part with the Proposed FD.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication and / or consular assistance as provided in Art. 12 and 13 Proposed FD. The suspect is informed of his right to consult a lawyer not only orally but also in writing. This could be considered a first step towards a 'Letter of Rights' as stipulated in Art. 14 Proposed FD.

## ITALY

*Right to legal advice, including level of legal aid*

The response is not clear on the time limits within which a suspect can have access to a defence counsel and whether it is provided throughout the entire proceedings. In so far it is not possible to determine whether the Italian system is in accordance with the Proposed FD. The lawyer does have the right to be present during interrogation and statements made in absence of a lawyer are even inadmissible in evidence. In this respect, Italian law exceeds Art. 2 § 2 of the Proposed FD.

Free legal aid is granted to persons whose financial means are insufficient. Also suspects who receive free legal aid can choose their own counsel. The level of remuneration of the assigned defence counsel is not specified in the response.

*Right to interpretation and translation*

Except for the recording of the interviews and the verification of the accuracy the provisions of the Proposed FD are complied with. Free interpretation is provided in all stages of the proceedings, when the suspect does not understand the language used during the proceedings. There is no scheme on emergency linguistic assistance. There is no professional register of court and legal interpreters available, but each court has a list of appropriate interpreters, who have attained their university qualifications. Interviews are not audio or video recorded and no formal scheme for verifying the accuracy of the interpretation exists.

Relevant documents are translated and submitted to the suspect.

*Right to specific attention for vulnerable suspects*

Minors and physically and mentally handicapped are considered vulnerable. The answer is unclear about the kind of specific attention to these suspects, which makes it difficult to assess whether Italian law complies with the proposed provisions on this matter.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.



## **LATVIA**

It was difficult to assess the exact level of implementation, because the answers given by the Latvian authorities were not very clear.

### *Right to legal advice, including level of legal aid*

On the right to legal advice the Latvian law generally complies with the proposed provisions. The response implies that the defence counsel can actively participate in all stages of the proceedings from the moment the person is acknowledged as suspect. Since the suspect has to be questioned within 24 hours and the counsel is allowed to be present during questioning, it can be assumed that these provisions exceed the requirements of Art. 2 § 2 of the Proposed FD. It is not clear whether there exists an official emergency scheme on legal assistance and the responses do not refer to a system of legal aid. In so far, the right to free legal advice in Art. 5 of the Proposed FD seems not to be implemented in Latvian legislation.

### *Right to interpretation and translation*

A person who does not know the language used in the proceedings or suffers from speech or hearing impairments, will be assisted by an appropriate interpreter. It is not clear whether this assistance is offered on State's expenses and whether the right to free interpretation as proposed in the FD is met. There is no scheme on emergency linguistic assistance, but in practice it will be provided within 24 hours. The interpreters and translators have to be knowledgeable on the judicial meaning of the contents and will initially be tested for three months. It is not common practice to audio or video record the interviews, but if so, the entire proceedings have to be recorded. The response is not clear on whether there exists a system of verification, other than the own liability of the interpreter and translator.

Procedural documents will be translated.

### *Right to specific attention for vulnerable suspects*

The responses did not refer to this subject.

### *Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## **LITHUANIA**

### *Right to legal advice, including level of legal aid*

In the Lithuanian responses is stated that "the suspect is entitled to consult a lawyer from the time of detention or of initial questioning". This does not specify the exact moment when the suspect is allowed access to his lawyer, but it can be assumed that the Lithuanian law complies with the proposed provision on the right to legal assistance 'as soon as possible' in Art. 2 § 2 of the Proposed FD. The lawyer may be present during questioning, which exceeds this provision. It is not clear though whether the lawyer can have access to his client prior to the questioning and there is no scheme for emergency legal assistance. The Lithuanian law on the obligation to provide free legal assistance fully complies with the provisions of the proposed FD. A suspect who does not have the means to pay for his own defence counsel will be granted free legal aid. The financial situation of the suspect is not examined. The remuneration of the assigned counsel, which is regulated by a Government decree, is not specified in the response.

### *Right to interpretation and translation*

On this matter, the Lithuanian law complies with the proposed provisions in the FD, since suspects who do not know the language of the proceedings or who are suffering from hearing or speech impairments have to be assisted by an interpreter. Interviews can be audio or video recorded and afterwards a language specialist can be asked to check the accuracy of the interpretation. If no recordings are made, no other system of verification exists. It is striking however, that there are no

specific requirements for interpreters or translators working at a police station. They can even be employed by the police.

All relevant documents have to be translated and submitted to the suspect.

*Right to specific attention for vulnerable suspects*

In general Lithuania complies with the provisions of the Proposed FD. Minors, physically and mentally handicapped and persons who do not know the Latvian language are considered vulnerable and in need of specific attention. Assistance by a defence counsel is obligatory. Corresponding procedural measures, as mentioned in Art. 10 and 11 of the Proposed FD, cannot be recognised in the responses.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## **LUXEMBOURG**

*Right to legal advice, including level of legal aid*

In general, the proposed provisions of the FD are complied with in Luxembourg. The suspect is informed of his right to consult a defence counsel or have one assigned, prior to his first interview. The suspect cannot be questioned without his defence counsel. This exceeds the proposed provisions on the right to legal advice in Art. 2 § 2 of the Proposed FD. There is no emergency scheme on legal assistance. Free legal aid is available, but only for indigent suspects. The level of remuneration of the assigned counsel is not specified in the response.

*Right to interpretation and translation*

An interpreter will be assigned when the suspect does not understand the language used in the proceedings. Interpreters are appointed by the Ministry of Justice and qualifications are demanded. If the suspect is deaf or mute, an interpreter will only be assigned if the suspect does not know how to read and write. There is no scheme on emergency linguistic assistance, which seems to imply that linguistic assistance cannot be guaranteed throughout the entire proceedings. The response does not mention anything about the translation of relevant documents. Apart from the right to interpretation and qualifications of the interpreters, the provisions of the Proposed FD do not seem to be complied with.

*Right to specific attention for vulnerable suspects*

Minors are considered vulnerable suspects. Audio and video recordings are made of their interviews. The response does not give much more information on this subject which makes it difficult to assess the level of compliance with the proposed provisions.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD.

A detained person is informed of his procedural rights in a language he understands. The response does not specify whether the detainee receives this information orally or also in writing.

## **MALTA**

In general, it was difficult to assess the exact level of implementation because the answers given by the Maltese authorities were not very clear.

*Right to legal advice, including level of legal aid*

In Malta, the level of provision with regard to the right to legal aid does not seem to comply fully with the proposed FD. After 48 hours of arrest the suspect has the right to consult a defence counsel, which generally cannot be considered 'as soon as possible' as provided in Art. 2 § 2 of the Proposed FD. The defence counsel cannot be present during questioning. There is however a system of emergency legal assistance, in which experienced lawyers take part. It is not clear whether legal assistance is

guaranteed throughout the entire proceedings and if the counsel can have access to his client prior to the questioning.

Free legal aid is granted to practically anyone who applies for it on the basis of financial means. It is not specified if and how the assigned defence counsel is remunerated.

*Right to interpretation and translation*

It is difficult to assess to what extent the provisions of the Proposed FD are implemented. An interpreter is appointed to persons who do not know the language of the proceedings or suffer from hearing or speech impairments. There is a scheme to provide emergency linguistic assistance, but the response does not elaborate on this matter. Interviews are audio and / or video recorded, but again, this is not elaborated.

The response does not mention anything about translation of relevant documents.

*Right to specific attention for vulnerable suspects*

Juveniles and drug addicts are considered vulnerable. Social workers are asked to participate in the proceedings. The response does not elaborate on the specific attention which should be given to the suspects as mentioned in Art. 10 and 11 of the Proposed FD.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## **NETHERLANDS**

*Right to legal advice, including level of legal aid*

Dutch law complies in general with the proposed provisions concerning right to legal advice as set out in Art. 2 of the Proposed FD. Always and at any time during the proceedings, the suspect is entitled to choose a defence counsel or have one assigned. Assignment of a defence counsel is compulsory when the suspect is in custody. This implies that the State is obliged to provide legal assistance when the suspect is in custody as is stipulated in Art. 3 Proposed FD. The defence counsel is allowed to be present throughout questioning, but not during interrogation by the police. It is not clear whether the suspect can have access to his defence counsel before questioning and interrogation as is provided in Art. 2 § 2 of the Proposed FD.

Legal aid is granted to indigent suspects and to suspects in custody, regardless of their financial situation. The latter exceeds the provisions of Art. 5 Proposed FD. The level of remuneration of the assigned counsel is not specified in the response.

*Right to interpretation and translation*

As is also stipulated in Art. 6 Proposed FD, the suspect has the right to have an interpreter appointed – free of charge – if he does not understand the language of the proceedings. When it concerns deaf or mute persons the proceedings will be in writing, which does not comply with Art. 6 § 3 of the Proposed FD. There is no emergency scheme on linguistic assistance, but a suspect has to be questioned with the assistance of an interpreter if he does not know the language of the proceedings. If an interpreter cannot be summoned within 6 hours, interpretation will be provided by telephone. This seems to comply with Art. 6 of the Proposed FD. The interviews are not audio or video recorded and there is no system of verification, which is below the standards of Art. 9 Proposed FD.

Only the summons will be translated. Other documents have to be translated by a defence counsel or an interpreter. This seems to comply with Art. 7 Proposed FD, provided that the fairness of the proceedings is safeguarded. It is not clear however, whether the assistance of this interpreter is paid by the State and whether the translations of the documents are also submitted to the suspect in writing.

*Right to specific attention for vulnerable suspects*

In line with Art. 10 § 1 Proposed FD, minors, physically and mentally handicapped are considered vulnerable. Measures for specific attention are available but not specified in the response, which makes it difficult to assess the level of compliance with the proposed provisions as stipulated in Art. 10 and 11 Proposed FD.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD. The Ministry of Justice has brochures which explain a suspect's rights in a number of languages. This could be considered some sort of 'Letter of Rights' as stipulated in Art. 14 Proposed FD. It is not clear however which rights are exactly mentioned in these brochures and if and when these brochures are handed out to suspects.

**POLAND**

*Right to legal advice, including level of legal aid*

In general, Polish law complies with Art. 2 § 1 of the Proposed FD regarding the right to legal advice. The suspect has the right to contact a lawyer at any time and the lawyer may be present throughout the entire proceedings, also during questioning. However, the police has the authority to supervise the conversations between lawyer and suspect during the investigation. This infringes with the right to private communications with the defence counsel and raises the question how the right to legal advice has to be valued in practice during this period. There is no emergency scheme on legal assistance, this makes it difficult to guarantee participation of a lawyer as soon as possible. A defence counsel is obligatory in case of vulnerable suspects, which implies the State's obligation to provide legal assistance as mentioned in Art. 3 Proposed FD.

Free legal aid is granted to indigent suspects as is stipulated in Art. 5 Proposed FD. However, in case of a conviction or conditional discontinuance of the proceedings, the suspect can be obliged to pay the expenses of his counsel. The latter does not comply with Art. 5 Proposed FD. The level of remuneration of the assigned counsel is not specified in the response.

*Right to interpretation and translation*

In general, Polish law complies with the proposed provisions as stipulated in Art. 6 – 9 Proposed FD. An appropriate interpreter is appointed if the suspect does not know the language of the proceedings or if he suffers from speech or hearing impairments. The interpreter translates relevant documents orally, but the suspect will also receive written translations. There is no scheme on emergency linguistic assistance, but the suspect cannot be questioned in absence of an interpreter. A list of sworn interpreters is drawn up to ensure that the appointed interpreters are sufficiently qualified as stipulated in Art. 8 Proposed FD. It is not common practice to audio or video record the interviews as is required by Art. 9 Proposed FD, but it is possible. Verification will be done by the Chief Justice of the Court. It is unclear what happens when an interpretation is considered to be inaccurate.

The suspect will receive translations of all documents relating to the preliminary proceeding in due time before the hearing, which complies with Art. 7 Proposed FD. It is not clear whether linguistic assistance is offered on State's expenses so it remains unclear whether the provision of free interpretation and translation is complied with.

*Right to specific attention for vulnerable suspects*

In accordance with Art. 10 § 1 Proposed FD minors, physically handicapped and mentally ill persons are considered vulnerable. The measures of specific attention as described in Art. 10 and 11 Proposed FD cannot be recognised in the response.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD. Prior to the first examination, the suspect is informed of his procedural rights orally and in writing. The latter could be some sort of 'Letter of Rights' as provided in Art. 14 Proposed FD. The suspect is asked to sign for the receipt of these written instructions, as stipulated in Art. 14 (4). It is unclear whether these instructions are provided in different translations as is required by Art. 14 Proposed FD.

## PORTUGAL

### *Right to legal advice, including level of legal aid*

In general, Portuguese law complies with the provisions of Art. 2 Proposed FD regarding the right to legal advice. When the suspect is considered a detainee, he has the right to choose a lawyer and be assisted at all stages of the proceedings, also during questioning. There is no scheme of emergency legal assistance, which makes it difficult to guarantee that legal assistance is available 'as soon as possible', as provided in Art. 2 (1) Proposed FD. The response does not mention the obligation of the State to provide legal assistance as stipulated in Art. 3 Proposed FD.

In accordance with Art. 5 Proposed FD, there is a system of granting legal aid, which is based on the suspect's financial situation. The level of remuneration of the assigned counsel is not specified in the response.

### *Right to interpretation and translation*

As provided in Art. 6 Proposed FD, an appropriate interpreter is provided, free of charge, to suspects who do not know the language of the proceedings or who suffer from hearing or speech impairments. Interpreters are also asked to translate relevant documents. It is not clear whether this translation is submitted to the suspect in writing. There are no guarantees mentioned to ensure that interpreters are sufficiently qualified, as is stipulated in Art. 8 Proposed FD, since no specific qualifications are required for interpreters. It is possible to audio or video record the interviews, but it is not common practice. There is no system of verification. This does not correspond with Art. 9 Proposed FD.

It is not clear whether written translations of relevant documents are submitted to the suspect, which makes it impossible to assess the level of compliance with Art. 7 Proposed FD.

### *Right to specific attention for vulnerable suspects*

In line with Art. 10 Proposed FD minors, persons with speech or hearing impairments, illiterate persons and persons who do not know the language of the proceedings are considered vulnerable. These suspects are entitled to specific attention, but the measures as described in Art. 10 and 11 Proposed FD cannot be recognised in the response.

### *Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

## SLOVAK REPUBLIC

It is difficult to assess the exact level of implementation because the answers given by the Slovak authorities were not very clear.

### *Right to legal advice, including level of legal aid*

The right to legal advice is not mentioned in the responses. A defence counsel is obligatory when it concerns physically or mentally handicapped, which implies that the State is obliged to provide legal assistance as is stipulated in Art. 3 Proposed FD. There is a system to grant legal aid, but this system is not specified in the answer.

### *Right to interpretation and translation*

The response is not clear on the provisions regulating appointment of interpreters, which is regulated in Art. 6 – 9 of the Proposed FD. There is a scheme of emergency linguistic assistance, but the interpreters participating in this scheme are police officers. It is questionable whether these interpreters can be considered independent. Court interpreters are no members of the police force. The response does not mention the recording of the interviews nor verification of the accuracy of the interpretation as mentioned in Art. 9 Proposed FD.

Nothing is mentioned about the translation of relevant documents.

*Right to specific attention for vulnerable suspects*

In line with Art. 10 Proposed FD juveniles, physically and mentally handicapped and persons who cannot speak the language of the proceedings are considered vulnerable. These suspects are entitled to specific attention, but the measures as described in Art. 10 and 11 Proposed FD cannot be recognised in the response.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

**SPAIN**

*Right to legal advice, including level of legal aid*

On the average, Spanish law complies with the provisions of Art. 2 Proposed FD regarding the right to legal advice. From the moment the suspect is detained or charged he has the right to consult a lawyer. He can choose his own lawyer or a lawyer will be appointed to him within 8 hours from the moment the police informs the Bar of the suspect's detention. Presence of the lawyer during questioning is obligatory, which exceeds the provisions of Art. 2. It is not clear whether the suspect can consult his lawyer prior to the questioning as is stipulated in Art. 2 (2). There is an emergency scheme on legal assistance, which guarantees all suspects the assistance of a lawyer within 8 hours. Free legal aid will be granted if the suspect can prove he does not have sufficient financial means to pay for his own lawyer, which is in line with Art. 4 Proposed FD. The level of remuneration of the assigned counsel is not specified in the response.

*Right to interpretation and translation*

As provided in Art. 6 Proposed FD, an appropriate interpreter will be appointed if the suspect does not know the language of the proceedings or if he suffers from hearing or speech impairments. There is a scheme for emergency linguistic assistance, but it only covers English, French, German and Arabic. Contrary to the proposed provisions of Art. 9 Proposed FD, interviews are not audio or video recorded and there is no system to verify the accuracy of the interpretation.

In accordance with Art. 7 Proposed FD, all relevant procedural documents are translated and submitted to the suspect. It is not clear whether linguistic assistance is offered free of charge as is required by Art. 6 and 7 Proposed FD.

*Right to specific attention for vulnerable suspects*

Categories of vulnerable suspects are not specified (apart from deaf persons and persons who do not know the language of the proceedings). If a suspect is considered vulnerable he will be given specific attention. On the basis of this response it is difficult to assess the level of compliance with Art. 10 and 11 of the Proposed FD. It is unclear which suspects are considered vulnerable (apart from the ones mentioned above) and what kind of specific attention is given to them.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14.

**SWEDEN**

*Right to legal advice, including level of legal aid*

In general, Swedish law seems to comply with the provisions of Art. 2 of the Proposed FD regarding the right to legal advice. When he is under arrest or detained, a suspect can appoint a lawyer or have one appointed to him at any time. The lawyer has the right to be present during questioning, which goes beyond the required level of legal assistance in the Proposed FD. There is no emergency scheme on legal assistance since the lawyer may be asked for assistance at any time. A defence counsel is obligatory when it concerns a serious criminal offence and when the person is taken into custody, which implies that the State is obliged to provide legal assistance as provided in Art. 3 Proposed FD.

Free legal aid is granted, regardless of the suspect's financial situation. When assistance by a defence counsel is obligatory or when the court decides a defence counsel is necessary, a lawyer will be appointed and paid by the State. If the suspect is convicted, he has to reimburse the costs for the defence counsel and for the counsel of the aggrieved person. His financial situation will be taken into account. The level of remuneration of the assigned counsel is not specified in the response, except that the lawyer is paid by a fixed hourly rate and a fixed fee in minor cases.

*Right to interpretation and translation*

In line with Art. 6 Proposed FD, an appropriate interpreter will be appointed when the suspect does not know the language of the proceedings or if he suffers from speech or hearing impairments. Interpreters have to be completely independent. There are schemes of emergency linguistic assistance available at police stations. No special qualifications are required of the interpreters, which makes it difficult for the State to ensure sufficiently qualified interpreters as prescribed in Art. 8 Proposed FD. Contrary to Art. 9 Proposed FD, interviews are not audio or video recorded and there is no system to verify the accuracy of the interpretation.

The court is obliged to translate procedural documents if the court has reason to believe that the suspect does not understand the language of the proceedings. This complies with Art. 7 Proposed FD.

*Right to specific attention for vulnerable suspects*

Only minors are identified as vulnerable suspects, which does not fully comply with Art. 10 Proposed FD. Parents or guardians should be present during questioning. Other measures of specific attention as described in Art. 10 and 11 Proposed FD cannot be recognised in the response.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14 Proposed FD.

## **UNITED KINGDOM: ENGLAND AND WALES**

*Right to legal advice, including level of legal aid*

When the suspect is in custody he has the right to consult his lawyer privately at all times. This seems to comply with Art. 2 Proposed FD, however, when it concerns a serious arrestable offence access to a lawyer can be delayed for 36 hours at most if the suspect has not been charged yet and if exercising this right is considered to harm the investigation. The defence counsel can be present during questioning, but only if he is available and easily contactable. Because a person in police custody is entitled to a lawyer for private consultation and communication at any time, it is assumed that he also can have access to his lawyer prior to the questioning as described in Art. 3 Proposed FD. In general, interviews are audio recorded. There is no specific scheme for emergency legal assistance.

There is a system to grant free legal aid. Only in case of a conviction, the suspect needs to provide information on his financial situation and reimbursement of legal aid costs can be asked from him. The response does not mention the level of remuneration of the assigned counsel.

*Right to interpretation and translation*

In accordance with Art. 6 Proposed FD, an appropriate interpreter will be appointed free of charge when the suspect does not know the language of the proceedings or if he suffers from speech or hearing impairments. There is no scheme for emergency linguistic assistance. Since certain qualifications are required for interpreters to be included on recognised lists, the State is able to ensure sufficiently qualified interpretation as required by Art. 8 Proposed FD. It is not common practice to audio record these interviews, but it is possible. Normally the interpreter records everything in writing and the suspect is asked to verify the accuracy of the written record. If he agrees with the contents he can sign the record, if not, he can indicate in what respect the interpretation is inaccurate. The question is how it is possible for the suspect to verify the accuracy of the interpretation. The foregoing does not seem to comply in full with the provisions of Art. 9 Proposed FD.

Prosecution documents are translated on the defendant's request which seems to be in compliance with the provisions of Art. 7 Proposed FD.

*Right to specific attention for vulnerable suspects*

In line with Art. 10 Proposed FD juveniles, mentally and physically handicapped and foreign nationals are considered vulnerable. A third person is allowed to be present during questioning, interviews are tape recorded and if necessary an interpreter is appointed. In general this complies with the provisions of Art. 10 and 11 Proposed FD.

*Right to communication and / or consular assistance and 'Letter of Rights'*

Foreign nationals are granted consular assistance as provided in Art. 13 (1) Proposed FD. The responses do not cover the duty to inform the suspect of his rights in writing as stipulated in Art. 14 Proposed FD.

**UNITED KINGDOM: SCOTLAND**

*Right to legal advice, including level of legal aid*

The suspect has the right to choose a lawyer when he is detained or cautioned and formally charged. He will have access to his lawyer only after the police interview. This does not comply with the provisions of Art. 2 § 1, 2 and 3 Proposed FD. Depending on the technical facilities, an audio or video recording of the interviews is made. There is no scheme for emergency legal assistance except for serious offences.

In accordance with Art. 5 Proposed FD, there is a system to grant free legal aid. The suspect has to provide information on his financial situation and in summary cases it is additionally considered whether it is in the interest of justice that legal aid should be available. The response does not mention the level of remuneration of the assigned counsel.

*Right to interpretation and translation*

In line with Art. 6 Proposed FD, an appropriate interpreter will be appointed when the suspect does not know the language of the proceedings or when he suffers from speech or hearing impairments. There is a scheme for emergency linguistic assistance. Interpreters need to have a Diploma in Public Service Interpreting, which allows the State to ensure sufficiently qualified interpretation as prescribed in Art. 8 Proposed FD. Depending on the technical facilities, an audio or video recording of the interviews is made. The response does not mention anything about a system to verify the accuracy of the interpretation. This is not in compliance with Art. 9 Proposed FD.

Relevant documents are translated in accordance with Art. 7 Proposed FD.

*Right to specific attention for vulnerable suspects*

Apart from physically handicapped, all suspects mentioned in Art. 10 Proposed FD are considered vulnerable. A third person is allowed to be present during questioning, in accordance with Art. 11 § 3 Proposed FD. Other measures of specific attention as described in Art. 10 and 11 Proposed FD cannot be recognised in the response.

*Right to communication and / or consular assistance and 'Letter of Rights'*

The responses do not cover the right to communication as provided in Art. 12 and 13 Proposed FD and the duty to inform the suspect of his rights in writing as stipulated in Art. 14 Proposed FD.



## 4. Conclusion

This study assessed the levels of provision of procedural rights afforded to suspected persons in criminal proceedings throughout the EU with the aim of drawing up conclusions about existing levels of safeguards and provisions of rights in the EU.

The questionnaire sent to the Ministries of Justice and Home Affairs in the Member States by the Commission in the course of 2002 and 2003 contained questions regarding special provisions for vulnerable groups of suspects and defendants, access to a lawyer and criminal legal aid, detention and questioning, access to an interpreter and translator, evidence, *in absentia* proceedings, serving sentences and miscarriages of justice.

The analysis is limited to a selection of the responses considered as relevant to the five rights covered by the Proposed FD:

1. the right to legal advice including the level of legal aid;
2. the right to interpretation and translation for non-native defendants;
3. the right to specific attention for persons who cannot understand or follow the proceedings;
4. the right to communication and/or consular assistance;
5. the way in which the suspect/defendant is notified of his rights ('Letter of Rights').

Chapter 2 and its Annexes 1a-1e gives a summarized comprehensive overview of Member States' responses per question. Only the questions of the questionnaire, which specifically refer to the five basic rights are included in this overview:

- Access to counsel (questions 4a – 4c, 5b, 10b)
- Right to legal aid (question 2a – 2c and 12c)
- Right to interpretation (and translation) (questions 6a – 6e)
- Right to translation (and interpretation) (questions, 8a – 8c and 7c)
- Right to specific attention for vulnerable suspects (questions 1a – 1c)

In Chapter 3 the outcome of the questionnaire is analysed on a Member State by Member State basis and compared with the desired level of implementation as stipulated in the Proposed FD.

Although the replies to the questionnaire were primarily based on formal legislation rather than on their application in practice, and some responses were not clear or complete, the overviews provide a broad picture of existing levels of provision. What in particular became clear is that the rights covered by the Proposed FD are implemented in very different ways in the different Member States.

The following general conclusions can be drawn.

### *The right to legal advice and the level of legal aid*

In all Member States provisions exist guaranteeing suspects the right to choose their own lawyer, normally at all stages of criminal proceedings. The same applies to the arrangements for lawyers to be appointed or assigned to suspects when they do not know a lawyer themselves or cannot afford to pay one, although in the latter situation free choice of the suspect usually is restricted. There are, though, considerable differences concerning the moment in the criminal proceedings at which the lawyer is granted access to the suspect and/or the moment a lawyer is assigned to the suspect. Only Estonia, Latvia and Malta mention specific time limits<sup>74</sup>. A number of Member States (9) mention time limits such as 'from the beginning of the proceedings' or 'from the moment the person is charged' or 'after

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<sup>74</sup> Estonia within 24 hours from detention, Latvia within 24 hours and Malta within 48 hours after arrest.

the police interview', without specifying the exact time period<sup>75</sup>. The remaining Member States do not mention a time limit at all<sup>76</sup>. Only 7 Member States have an emergency scheme for providing legal assistance on a 24 hour basis<sup>77</sup>. It is therefore difficult to draw conclusions as to whether legal aid is provided "as soon as possible" as mentioned in Art. 2 of the Proposed FD and it is even more difficult to establish if suspects have the right to receive legal advice before answering questions in relation to the charge. Only the response of Germany shows that if the suspect wishes to speak first with a defence counsel, the intended questioning must, pursuant to Supreme Court practice, be postponed. It should be noted that, according to the Polish response, the arresting official may reserve the right to be present during the suspect's consultation with a lawyer, which infringes the right to private communication with defence counsel.

There are also differences between Member States in allowing defence counsel to be present during police interview. In 16 Member States<sup>78</sup> the lawyer can be present during police interrogation, while in 8 Member States no such right exists. In some Member States confessions made without the presence of a defence counsel are inadmissible in evidence<sup>79</sup>.

In granting legal aid some Member States apply a means test<sup>80</sup> while others do not<sup>81</sup>. As to the question what qualifications are required of lawyers participating in the legal aid scheme, the responses suggest that legal aid has to be provided by lawyers registered as members of the Bar. Only Greece, Hungary and the Netherlands require additional qualifications.

Most Member States did not specify the level of remuneration of assigned counsel in their responses to the questionnaire. Only Finland and Hungary gave a specification<sup>82</sup>. As a consequence it remains unclear whether remuneration is enough to cover costs for legal aid and thus make participation in the legal aid scheme attractive for defence lawyers. In some countries, participation of lawyers in a legal aid scheme is obligatory, while it is not clear if this has to be provided *pro bono*.

The table beneath shows that the national budgets for legal aid in criminal proceedings differ considerably.

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<sup>75</sup> Belgium, Czech Republic, Greece, Luxembourg, Lithuania, Portugal, Spain, UK (England, Scotland and Wales).

<sup>76</sup> Austria, Cyprus, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Netherlands, Poland, Slovak Republic and Sweden.

<sup>77</sup> Denmark, France, Germany, Ireland, Malta, the Netherlands and Spain.

<sup>78</sup> Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Latvia, Luxembourg, Lithuania, Poland, Portugal, Spain, Sweden, England.

<sup>79</sup> Czech Republic, Estonia, Italy, Spain.

<sup>80</sup> Austria, Belgium, Cyprus, Czech Republic, France, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Spain, Scotland.

<sup>81</sup> Denmark, Estonia, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Slovak Republic, Sweden, England and Wales.

<sup>82</sup> Finland mentions an hourly rate of € 84 and Hungary € 8.

Member State	Year	Total budget for legal aid	Percentage used for criminal legal aid	Budget for criminal legal aid
Austria	2002	€ 13.990.000	60%	€ 8.394.000
Belgium	2000-2001	€ 25.280.000		
Cyprus		€ 8.303.062.280 *We doubt that this figure is accurate.	2,5%	€ 207.576.557 *We doubt that this figure is accurate.
Czech Republic	2003	€ 1.128.958		
Denmark	2003			€ 63.900.000
Estonia	2002	€ 1.538.795	97%	€ 1.492.632
Finland	2001	€ 48.800.000	70%	€ 34.160.000
France	2002	€ 4.887.212.121 (total budget for Ministry of Justice)	1,65% of total budget for Ministry of Justice	€ 80.639.000
Germany				
Greece				
Hungary	2003			€ 6.000.000
Ireland	2002			€ 29.978.000
Italy	2002			€ 38.269.456
Latvia				
Lithuania	2005	€ 2.070.783		No separate amount for criminal legal aid.
Luxembourg				
Malta				
Netherlands	2002	€ 83.526.000		
Poland	2005	€ 17.205.595 (total budget for Ministry of Justice)	1,84% of total budget for Ministry of Justice	€ 316.582
Portugal				
Slovak Republic				
Spain	2002	€ 990.156.834 (total budget for Justice System)	2,78% of total budget for Justice System	€ 27.526.360
Sweden	2002	€ 65.909.090	88% of total criminal justice budget	€ 58.000.000
England and Wales		€ 2.343.310.032	6,07% of total criminal justice budget	€ 142.238.919
Scotland		€ 2.350.413.925	8% of total criminal justice budget	€ 118.033.114

### *The right to interpretation and translation*

All Member States mention provisions containing a right to interpretation. As there was no specific question in the questionnaire regarding to free interpretation, it is not clear from the answers how this is regulated. Some Member States show in their responses, however, that interpretation is free in cases in which the suspect does not speak or understand the language of the proceedings<sup>83</sup>. It remains unclear, however, from the responses whether there is a right to interpretation in the pre-trial phase and if the suspect receives free interpretation of legal advice.

<sup>83</sup> Belgium, Cyprus, Finland, France, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Spain, Sweden.

The larger part of the Member States do not have an emergency scheme for linguistic assistance on a 24 hour basis. Several Member States require interpreters and translators to have certain qualifications<sup>84</sup>. Others require no specific qualifications, such as a linguistic education or diplomas<sup>85</sup>, although it is difficult to derive concrete information on this from the responses<sup>86</sup>.

Free translation of relevant documents is provided for in all Member States, but sometimes this is only done orally<sup>87</sup>. Mostly it is not clear from the responses who decides on the relevancy of documents and if the defence has possibilities to request the translation of certain documents<sup>88</sup>.

#### *Vulnerable suspects*

When it comes to vulnerable suspects, there is only unanimity when children are concerned. On average, children from the age of 15 years are considered criminally liable. Some Member States however apply very divergent age limits. For example in Cyprus children from the age of 7 can be considered liable and in France, children from the age of 10 are criminally liable. Other categories of vulnerable suspects are mentally ill or handicapped persons, physically handicapped persons, and sometimes addicts and foreign nationals are mentioned. For minors, special proceedings are often applicable and/or assignment of counsel is compulsory. With the exception of Germany in case of juveniles, there are only few Member States that apply (all) special measures as proposed in Art. 10 and 11 of the Proposed FD to categories of vulnerable suspects<sup>89</sup>.

#### *Right to communication and/or consular assistance and Letter of Rights*

In general, the responses do not cover the right to communication, as provided in Art. 12 and 13 of the Proposed FD, or the duty to inform the suspect of his rights in writing, as stipulated in Art. 14 of the Proposed FD. The responses of some Member States such as Austria, Ireland, Poland, refer to some kind of 'Letter of Rights' and England and Wales mention the right to consular assistance, however.

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<sup>84</sup> Austria, Czech Republic, Estonia, Hungary, Italy, Latvia, Luxembourg, Poland, England and Wales and Scotland.

<sup>85</sup> Belgium, Cyprus, Denmark, Finland, Germany, Ireland, Lithuania, Portugal and Sweden.

<sup>86</sup> Greece, France, Malta, the Netherlands, Slovak Republic and Spain.

<sup>87</sup> Cyprus and Portugal.

<sup>88</sup> Except for France and England and Wales.

<sup>89</sup> Belgium, Hungary, Ireland, Lithuania, France, Sweden, England and Wales, Scotland

## ANNEX 1 QUESTIONNAIRE

Since this report focuses on the basic rights as set out in the Proposed FD, several questions have been marked with [\*], to indicate specific reference to these rights. Accordingly, only the answers to these questions are included in this report.

The following overview combines both questionnaires as they were distributed by the Commission in 2002 and 2003. Additional questions which were raised in the questionnaire of 2003, are marked with [\*\*]. These questions are not answered by all Member States and therefore not included in the study.

### General

- \* 1. Vulnerable groups (suspects and defendants)
  - A) Is there in your national legal system a mechanism for identifying suspects belonging to “vulnerable groups” (such as, but not limited to, minors, the physically handicapped etc.)? How is such identification made? Is professional guidance sought in making this identification?
  - B) Which categories of vulnerable suspects exist?
  - C) Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.
- \* 2. Criminal legal aid
  - A) What is the national budget for legal aid in criminal proceedings? This should be given in absolute terms and also as a percentage of the total criminal justice budget.
  - B) Is there a scheme for emergency assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what qualifications are required of lawyers participating in this scheme?
  - C) How is the system for granting criminal legal aid for proceedings? Please give details of entitlement, eligibility, any maximum amounts and how lawyers are paid. What qualifications are required of lawyers participating in this scheme?
- 3. Are investigating officers other than police officers (such as customs officers and immigration officers) bound by any legislation or Code of Professional Conduct to respect the rights of individuals they are investigating? If so, please give details.

### Pre-charge/charge

- \* 4. Access to a lawyer
  - A) What are the mechanisms and time limits for giving a suspect access to a lawyer?
  - B) Is the lawyer present throughout questioning if the suspect wishes it?
  - C) What is the evidential value of a confession made by a suspect in the absence of his lawyer?
- 5. Detention and questioning
  - \*\*i) Does your country recognise a right for anyone to apprehend a person observed in the act of committing an offence (in flagrante delicto) or fleeing from it? (CR)
  - \*\*ii) If this is the case, which is the time limit for turning over such a person to the competent authorities? (CR)
  - \*\*iii) Which authorities/officials may take the initial decision on arrest/apprehension? (CR)
  - \*\*iv) Which is the time limit for contacting the prosecutor/other legal authority/court after the initial decision on arrest/apprehension? (CR)
  - A) How long may a suspect be detained without charge?
  - \* B) Is the interview tape- or video-recorded? If so, how many copies are made and who is entitled to receive one?

C) Who is authorized to decide whether or not the suspect will be granted or refused bail (provisional liberty)? (This question applies to the initial bail decision taken once the suspect has been charged at the police station. Subsequent applications to court for bail and to vary bail conditions will form the subject of a separate study and are not relevant here.)

\* 6. Access to an interpreter/translator

A) If the suspect does not understand the language of the State or region in which he finds himself accused, what provisions exist for interpretation of questions and translation of relevant documents?

B) Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?

C) Is there a scheme for recruiting qualified translators/interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required of the translators/interpreters? Are there any specific qualifications recognized officially (for example by the Ministry of Justice) for this specialized area of translation/interpretation?

D) Are the interviews and the interpretation of questions and replies tape- or video recorded? Is there any system for verifying the quality and accuracy of the translation/interpretation?

E) What mechanisms exist to ensure that suspects who are foreign nationals understand the proceedings and what they are accused of from a legal point of view?

**Pre-trial**

7. Evidence

A) What rules exist to prevent the investigating authorities improperly obtaining evidence?

B) What is the extent of prosecution disclosure? Are there any exemptions from the prosecution's duty of disclosure (e.g. for public interest reasons or to protect a vulnerable witness)?

\* C) If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?

**At trial**

8. Language difficulty or deafness

\* A) If the defendants cannot follow proceedings in the language of the State or region in which the trial is held, either because of language difficulty or because he is deaf, what provisions exist for interpretation or signing during the trial?

\* B) Where there is a prima facie language difficulty (e.g. a foreign national or a defendant from a different region), who makes the assessment of whether the defendant is capable of following the proceedings without assistance?

\* C) What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?

D) Are there liability arrangements in the events of an acquittal? (NB note to translation: this question has been taken verbatim from the mutual recognition program of measures and should therefore be translated into French as "quel est votre régime de responsabilité en cas de non-lieu, de relaxe ou d'acquittement?" so as to remain faithful to that text. Thank you.)

E) What percentage of those charged with an offence are ultimately convicted? Please also give separate figures for proceedings abandoned by the prosecution before the start of the trial, for convictions at first instance and for first instance convictions overturned on appeal.

9. Evidence

A) What procedures exist for applying to have evidence declared inadmissible?

10. In absentia proceedings

A) Does your legal system provide for in absentia proceedings? If so, please describe the relevant provisions.

- \* B) Is there a requirement that the defendant be represented by legal counsel in his absence?

### Post-trial

11. Serving the sentence
- A) If the defendant is from abroad and is found guilty, are there any existing bilateral arrangements enabling transfer to his Home State for serving the sentence? If so, with which States?
  - B) How many nationals of other Member States (who are not normally resident) are currently serving sentences in your prisons? What percentage is this of the total prison population?
  - C) Are nationals of other Member States currently serving sentences entitled to day release on the same terms as nationals?
  - D) Are the parole and other remission of sentence arrangements the same for nationals and non-nationals? Are there cases where parole is conditional on the person concerned leaving the country if he wants to benefit from the system?
  - E) Is there provision for expelling non-nationals at the end of their sentence?
12. Miscarriages of justice
- A) Is there an independent body appointed to consider claims that there has been a miscarriage of justice?
  - B) If it transpires that there has been a miscarriage of justice, how is financial (or other compensation for the wrongly accuses/prosecuted person calculated and what does the person have to do in order to obtain such compensation?
  - \* C) Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?

### Presumption of innocence

- \*\*13. How is the notion of 'presumption of innocence' guaranteed/protected in both legal and practical terms? (C) (CR) (E) (M) (SR)

### Preventive detention

- \*\*14. On what legal grounds can a person be taken in preventive detention? (C) (CR) (E) (M) (SR)
- A) Are there any special conditions/reasons for pre-trial detention (e.g. risk of failing to attend trial (absconding); of interfering with evidence or witnesses, or otherwise obstructing the course of justice; of committing an offence on bail; of harm against which he or she would be inadequately protected or to be a disturbance to public order? (CR) (E) (SR)
  - B) Decision on the detention.
    - i) If your legal system provides that there may be a preliminary decision on detention, which legal authority is empowered to take such a decision (prosecutor/other legal authority/police)? (CR) (E) (SR)
    - ii) Is there an obligation for the prosecutor/other authority to present the case for a court? If so, which is the time limit? Which is the time limit for the court to decide on the detention? (CR) (E) (SR)
    - iii) Are there any remedies against the decision of the court (in 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> instance)? If so, which? Is there an obligation and if so, which, to review the decision on detention after a certain time limit? (CR) (E) (SR)
    - iv) Pursuant to Article 5(3) ECHR a detained person is entitled to trial within a 'reasonable time'. Is this possible, under your legal system, to translate this concept into a specific time period (is it, i.e. related to the gravity or nature of the offence)? (CR) (E) (SR)
- \*\*15. What is the applicable regime in case of preventive detention (in terms of material conditions, prison conditions, role of the lawyer, ...)? (C) (CR) (E) (M) (SR)
- A) Are there any special provisions for certain categories of suspects (such as juveniles, terrorists, mentally ill)? (CR) (E) (SR)

B) How are pre-trial detainees to be treated, i.e. are there any minimum rules regarding the treatment of remand prisoners in your country, and if so, which? Are detained suspects segregated from those already convicted? (CR) (E) (SR)

- \*\*16. What judicial control is there of a legal and material conditions during preventive detention? (C) (CR) (E) (M) (SR)
- \*\*17. Does your country recognise or transpose decisions by legal authorities of foreign countries regarding supervision or other alternatives to pre-trial detention? If this is the case, please describe these rules. (CR) (E) (SR)



## ANNEX 2 COMPLETE ANSWERS TO THE QUESTIONNAIRE

### REPLIES

#### General

Question 1	<p><b>1) Vulnerable groups (suspects and defendants)</b></p> <p><b>(a) Is there in your national legal system a mechanism for identifying suspects belonging to “vulnerable groups” (such as, but not limited to, minors, the physically handicapped etc.)? How is such identification made? Is professional guidance sought in making this identification?</b></p> <p><b>(b) Which categories of vulnerable suspects exist?</b></p> <p><b>(c) Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b></p>
Austria	<p>It should first be pointed out that the German versions of both the consultation paper and the questionnaire render the English word “defendants” as “Beklagte”, a term from civil procedure, rather than the correct “Beschuldigte”.</p> <p>As was previously stated in the comments by the Austrian Ministry of Justice on the consultation paper, Austria’s code of criminal procedure does not recognise the concept of the “vulnerable suspect”. Rather are provisions made for specific groups of people who are disadvantaged by their physical, mental or social circumstances, which are designed to balance or at least reduce their specific disadvantage (see response to Question 1b). In general, the “identification” of features which indicate “vulnerability” is dependent on information provided by the suspects themselves and on the perceptions of the court. If the judge lacks adequate experience of the relevant area, an expert will be consulted. If there is a possibility of mental illness, it is imperative that a medical specialist (psychiatrist) be consulted.</p> <p><b>(b) Which categories of vulnerable suspects exist?</b></p> <p>The following groups of people – a definitive list is not possible here – are covered by special regulations:</p> <p>Young people (= those who have reached the end of their fourteenth but not yet their eighteenth year) - minors (= those who have not yet reached the end of their fourteenth year) are not liable to prosecution (= minority for the purposes of criminal law );</p> <p>Defendants who do not have an adequate knowledge of the language of the court;</p> <p>People who, at the time of their offence, are incapable as the result of mental illness, mental deficiency, profound mental disturbance or other equivalent serious psychological disturbance, of realising that their actions are wrong, or of acting upon such realisation (not responsible for their own actions); defendants who, while they may be responsible for their own actions, have committed an offence under the influence of a mental or psychological abnormality of the first degree;</p> <p>Defendants who are blind, deaf, dumb or otherwise handicapped.</p> <p><b>(c) Once a suspect has been identified as vulnerable, do special measures apply? If so, please describe them.</b></p> <p>The overview below makes no claim to completeness.</p> <p>In the case of proceedings which arise from <i>juvenile offences</i> (criminal offences committed by people who have reached the end of their fourteenth but not yet their eighteenth year) <i>lighter sentences</i> apply. Thus the maximum sentence which is provided for in the case of an offence by</p>

	<p>a young person is between one and fifteen years' imprisonment (§ 5 lines 2 a and b of the Juvenile Court Act – JGG). The maximum of all other prison sentences is usually reduced by half: there is no minimum. Lower parameters also apply in the case of fines. The Austrian system of criminal law also recognises a multiplicity of <i>special procedural provisions</i>, which apply when the defendant is suspected of a juvenile offence or at the time of the pleadings is still a young person (i.e. has not reached the end of his eighteenth year). These special provisions provide, for example, for the notification of legal representatives (parents etc.) and their right to take part in criminal proceedings, an extension of legal aid (see response to Question 2) or stricter criteria as a condition for remand in custody and lower limits on the maximum period of remand in custody.</p> <p>Defendants who do not have an adequate knowledge of the language of the court are provided with language support, if appropriate in the form of an <i>interpreter</i>, if this is necessary in the interests of the administration of justice, and especially to preserve their rights to defend themselves. This applies in particular in the case of hearings and if a defendant asks for assistance with translation in order to inspect the documents or on the occasion of making a court order or an application by the prosecutor (§ 38a of the Code of Criminal Procedure – StPO).</p> <p>If as the result of a <i>physical</i> or mental <i>affliction</i>, a defendant is not able to follow the course of a hearing, express himself clearly or exercise his rights (<i>incapacity as regards a hearing</i>), a hearing cannot be held. In cases of this nature, capacity as regards a hearing will be reviewed by a medical specialist at regular intervals.</p> <p>People who, at the time of their offence, are incapable as the result of <i>mental illness</i>, mental deficiency, profound mental disturbance or other equivalent serious psychological disturbance, of realising that their actions are wrong, or of acting upon such realisation (<i>not responsible for their own actions</i> – see response to Question 2b) must have a defence counsel during the preliminary examination carried out by the examining judge. Both in the preliminary hearing and in the main hearing a medical opinion must be obtained from a psychiatrist. Instead of a committal, the Public Prosecutor must, in proceedings against someone who is not responsible for their actions, apply for detention in an institution for mentally disturbed offenders. In the main hearing it is imperative that the person affected should have a defence counsel (§§ 429, 430 of the Code of Criminal Procedure).</p>
<b>Belgium</b>	<p>En général, on peut dire que dans le système juridique belge, il n'existe pas à proprement parler de mécanisme d'identification des suspects appartenant à des groupes vulnérables. Néanmoins, la procédure pénale prévoit des mesures spécifiques et protectrices lorsque des personnes vulnérables sont impliquées dans une procédure pénale.</p> <p>Pour les mineurs, il existe une loi spécifique, la loi de 8 avril 1965 relative à la protection de la jeunesse, qui prévoit que des mineurs suspects sont poursuivis selon une procédure particulière et jugés par des tribunaux spécifiques, notamment des tribunaux de la jeunesse. Une procédure de réforme est actuellement en cours. Il faut noter aussi que la matière de la protection de la jeunesse est une matière assez complexe vu que la compétence est partagée entre l'Etat fédéral et les communautés.</p> <p>Le fédéral est compétent pour la poursuite et le jugement des mineurs suspects, c'est à dire l'aspect plutôt punitif, les communautés sont compétentes pour l'aide et la guidance des mineurs – suspects.</p> <p>Lorsqu'un mineur est victime ou témoin d'une infraction visée à l'article</p>

	<p>91bis du Code d'instruction criminelle, une procédure spécifique est prévue pour l'audition. Cette procédure est prévue dans les articles 91bis à 101 du Code de procédure pénale. Le mineur a le droit d'être accompagné lors de l'audition et un enregistrement audiovisuel peut être fait pour éviter le phénomène de la « victimisation secondaire » qui peut être causé par des auditions répétées. Egalement, lorsque le tribunal estime que la comparution du mineur est nécessaire à la manifestation de la vérité, cette comparution peut être effectuée par vidéoconférence, à moins que le mineur n'exprime la volonté de témoigner à l'audience. En outre, si le tribunal l'estime nécessaire à la sérénité du témoignage, il peut, dans tous les cas, limiter ou exclure le contact visuel entre le mineur et le prévenu (articles 190bis et 327bis du Code d'instruction criminelle). Lorsqu'il existe des raisons de croire qu'un inculpé est, soit en état de démence, soit dans un état grave de déséquilibre mental ou de débilité mentale le rendant incapable du contrôle de ses actions, une procédure spécifique est prévue dans la loi du 9 avril 1930 (modifiée en 1964 et 1998) de défense sociale à l'égard des anormaux, des délinquants d'habitude et des auteurs de certains délits sexuels. Cette loi prévoit une procédure de mise en observation des inculpés avec des garanties spécifiques, une procédure d'internement des condamnés, une procédure de mise à disposition du gouvernement pour les récidivistes, les délinquants d'habitude et les auteurs de certains délits sexuels. Le contrôle sur l'internement est effectué par des Commissions de défense sociale qui sont composées par trois membres : un magistrat effectif ou honoraire, qui est le président, un avocat et un médecin. Il existe également, comme « organisation englobant », une Commission supérieure de défense sociale composée d'un magistrat effectif ou honoraire de la Cour de Cassation ou d'une Cour d'appel, qui est le président, un avocat et le médecin directeur du service d'anthropologie pénitentiaire. Une Commission ministérielle pour la réforme de la procédure de l'internement vient de finir ses travaux et sa proposition d'un avant – projet de loi relative à l'internement des délinquants atteints d'un trouble mental est actuellement en négociation pour être introduit au Parlement. Spécifiquement pour les délinquants sexuels, la loi de 28 novembre 2000 relative à la protection pénale des mineurs a introduit l'obligation pour le juge, avant d'ordonner une mesure probatoire dans le cadre de la loi du 29 juin 1964 concernant la suspension, le sursis et la probation, de prendre l'avis motivé d'un service spécialisé dans la guidance ou le traitement des délinquants sexuels. Cette obligation est également introduite lors de la libération à l'essai d'un interné et lors de la procédure de libération conditionnelle. Des projets sont en cours : une procédure pour des témoins anonymes, adoptée le 8 avril 2002 et une procédure pour des témoins protégés est en cours mais non encore votée par le Parlement.</p>
<b>Cyprus</b>	<p>(a) There is not a specific legal regime for the establishment of a mechanism for identifying suspects belonging to «vulnerable groups», but there exist certain provisions dealing with the subject in various legal texts, such as the Criminal Procedure Rules (Cap 155), where article 70 provides for a mechanism followed by the Court in order to identify the insanity of the accused. According to this article, if the accused appears to be insane and incapable of following the proceedings, the Court shall direct such inquiry as it thinks fit to be made with a view to ascertaining whether he is so insane and incapable and if the Court is of the opinion that he is so insane and capable, it shall direct him either to be kept in a governmental psychiatric institution for medical treatment or to be under</p>

	<p>the constant supervision of psychiatrist for the necessary medical treatment and for as long as it is considered necessary for his therapy. More generally, minors or persons who are mentally or physically handicapped, etc, are normally identified as such throughout special programmes or schemes which these persons follow, while they are under medical treatment or under judicial supervision. In order for the Court to make an identification of a person belonging to a «vulnerable group», it orders an investigation.</p> <p>b) Which categories of vulnerable suspects exist?</p> <p>(i) Minors. (Concerning their criminal liability, the Penal Code, Cap. 154 distinguishes between children up to the age of 7, who are not criminally liable for any act or omission, and persons under the age of 12, who are not criminally liable for an act or omission, “unless it is proved that at the time of doing the act or making the omission, they had the capacity to know that they ought not to do the act or make the omission”. (Article 14 of the Penal Code),</p> <p>(ii) persons who are physically handicapped,</p> <p>(iii) persons who are mentally handicapped or insane. (Article 12 of the Penal Code provides that “a person is not criminally responsible for an act or omission, if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission, but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission”.)</p> <p>Regarding insanity of the accused, article 70 of Cap.155 (Criminal Procedure Rules) provides for the mechanism to identify such insanity of the accused person.</p> <p>It has to be said that the provisions concerning the treatment of vulnerable persons, such as those regarding their identification or protection are emanating from the Constitution of Cyprus and from the respect and protection of human dignity and of human rights in general, thus the exemptions to this concept are strict. Such exemptions, according to which the deprivation of human liberty is allowed, can be found in Article 11(2)(d) and (e) of the Constitution, where the conditions of detention are provided, such as the detention of a minor by a lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority as well as the detention of persons from the prevention of spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicted persons.</p> <p>(c) Once a suspect has been identified as vulnerable, (after the relevant investigation ordered by the Court) the Court may decide that the suspect shall be given medical treatment in a medical centre or a psychiatric institution, that the suspect shall follow special medical or educational programmes or that the suspect shall be taken to a disciplinary institution(article 70 of the Criminal Procedures Rules). In addition to that, the accused person may be acquitted by a decision of the Court, (article 12 of the Penal Code), although it has been proved that he</p>
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	<p>committed the offence for which he is accused, due to insanity. In such cases, the Court decides that the insane person shall be kept in a governmental medical centre or psychiatric institution. (article 70 of the Criminal Procedure Rules.) Special measures regarding vulnerable persons also apply in relation to the accused who "by reason of physical infirmity" is unable to plead: in such case, the Court shall proceed as if the accused had plead not guilty. (Article 68(3) of the Criminal Procedure Rules.</p>
<b>Czech Republic</b>	<p>a) Our national legal system expressly recognises one group of vulnerable suspects - minors. A minor is a person whose age is between 15 and 18 years so no professional guidance is sought in making the identification as to whether particular person should be treated as a vulnerable suspect or not.</p> <p>b) Which categories of vulnerable suspects exist? As it has been said in the previous answer, our Criminal Proceedings Code recognises minors as vulnerable suspects. Furthermore, there are certain categories of suspects that are granted additional rights in criminal proceedings. We have in mind suspects granted "compulsory defence". A suspect must be represented by the defence counsellor in cases of compulsory defence. If a suspect in this case doesn't select any counsellor, the agencies involved in criminal proceedings must appoint one for him. The compulsory defence is, above all, provided to the accused who:</p> <ul style="list-style-type: none"> <li>• was taken into custody or are serving imprisonment,</li> <li>• has fled,</li> <li>• was deprived (or limited) of his/her legal capacity,</li> <li>• is prosecuted for the criminal offences where the national law provides for punishment by imprisonment for a maximum period of at least five years.</li> </ul> <p>The Criminal Proceedings Code furthermore provides for other conditions under which a compulsory defence must or may be granted.</p> <p>c) <u>Regarding minors:</u></p> <ul style="list-style-type: none"> <li>- they are entitled to compulsory defence,</li> <li>- they can be taken into custody only if this measure is reasoned by specific circumstances (it should be an exceptional measure),</li> <li>- child care authorities should be involved in proceedings,</li> <li>- the main hearing should be public excluded if necessary,</li> <li>- there are certain divergences as regards the punishments imposed on minors.</li> </ul> <p><u>Regarding accused entitled to compulsory defence:</u> See the answer to the previous question.</p>
<b>Denmark</b>	<p>(a) Besides the general adaptation of the procedure in cases involving minors, the Danish Administration of Justice Act (retsplejeloven, hereinafter called AJA) section 808 requires that relevant information regarding the accused's personal circumstances is brought to the knowledge of the court. Hereby, proper consideration can be given vulnerable persons. If the person suffers from mental problems, a more thorough mental observation can be undertaken prior to the judgment of the court, cf. section 809.</p> <p>(b) The Danish legal system does not operate with categories of vulnerable persons. However, special consideration can be shown towards: Persons under the age of criminal liability (15 years), cf. Criminal Code (straffeloven) section 15</p>

	<p>Minors (persons between 15 and 18)</p> <p>Mentally ill</p> <p>Persons with addiction</p> <p>(c ) ad i) Persons under the age of 15 will be taken care of by the social authorities. The rules and sanctions of the criminal justice system do not generally apply. To a certain extent investigative and other criminal procedural rules are applied (e.g. regarding arrest and confiscation)</p> <p>ad ii) Persons between the age of 15 and 18 are dealt with according to the rules of the criminal justice system, but special account is taken of their young age.</p> <p>With effect from 1 July 2001 a special “<i>youth sanction</i>” has been added to the Criminal Code in section 74 a. It is regarded as an alternative remedy to punishment and has a socio-educational purpose. The target group of the youth sanction is young offenders that have committed serious forms of crime. It is meant to be an alternative to unconditional imprisonment of up to 1½ year. The sanction is intended to have a duration of 2 years divided into 3 parts. The first approx. 2 months in a secured institution, the following approx. 12 months at a suitable open institution combined with activation in the form of education or work and finally the rest of the time (approx. 10 months) under ambulatory supervision from the social authorities.</p> <p>It follows from section 53 of the Criminal Code that, if a fine is not paid, a sentence in lieu in the form of imprisonment comes into play. However, section 13(2) of circular No. 113 of 26 June 1975 lays down that implementation of sentences in lieu of fines cannot generally take place for persons under the age of 18.</p> <p>Pursuant to section 57 of the Criminal Code on <i>probation orders</i> and <i>suspended sentences</i>, the court can stipulate as a condition for deferring sentencing or suspending enforcement that the convicted person must submit to supervision during the entire probation period or part thereof. In addition, the court can fix other conditions found suitable, including the condition that the convicted person must submit to measures as decided by the local authority pursuant to section 40 of the Social Service Act, possibly of a specified kind, and must comply with the directions issued to the offender by the local authority (section 57(1)(viii)). This means that it is then incumbent on the social authorities (the local authorities) to decide on the contents of the measures in question pursuant to the social legislation. This could be a stay for a certain period in an institution for children and young people.</p> <p>It follows from section 80 of the Criminal Code that in sentencing, special regard must be made to the seriousness of the offence and to information on the offender's character, including information on his general personal and social circumstances, his conditions before and after the offence and his motives for committing it.</p> <p>The provision is supplemented by section 84(1)(ii) of the Criminal Code, according to which the punishment prescribed by the Code can be reduced when the offender had not attained the age of 18 when he committed the criminal offence and it must be deemed unnecessary or harmful to apply the full punishment of the Code. The provision also includes a general maximum limit for punishment, as the punishment for this group of people - regardless of the offence - may not exceed imprisonment for eight years.</p> <p>It further follows from section 81(1) of the Criminal Code that one of the conditions for recidivism to have an effect in the sentencing of a new</p>
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	<p>offence is that the previous crime was committed after the offender had attained the age of 18. It is, moreover, possible to sentence persons under the age of 21 to a fine even if the violated provision does not allow the application of this sanction, cf. section 91(2) of the Criminal Code.</p> <p>Pursuant to section 722(1)(ii) of the AJA, charges in a case can be dismissed in full or in part if it is stipulated as a condition that the suspect submits to remedial measures according to social legislation. It furthermore follows from section 722(1)(iii) that charges in a case can be dismissed in full or in part in cases where the suspect was under the age of 18 at the time of the offence and conditions are stipulated pursuant to section 723(1) of the AJA. According to this provision it may be stipulated as a condition that the suspect pays a fine or accepts confiscation or forfeiture. Moreover, the same conditions can be stipulated as in suspended sentences, cf. above.</p> <p>Under the power provided for in section 722(1)(ii) and (iii), cf. section 723(1), of the AJA, a condition of, for example, a <i>youth contract</i> can be stipulated, whereby the youth commits him-/herself to abide to certain conditions. A violation of which can lead to the reopening of the case. Youth will thus be a very important factor both in connection with the choice of sanction and the specific meting out.</p> <p>Pursuant to section 752(2) of the AJA, administrative rules have been laid down regarding the cases in which the social authorities must be notified of and have access to attend questionings of suspects under the age of 18. It appears from these provisions that the social authorities must be notified and, if possible, have access to attend questionings in cases where the charge relates to violation of the Criminal Code or a matter for which legislation prescribes a custodial punishment. No notification is required, however, in cases of questioning in connection with apprehension of the suspect by the police during or in direct connection with the commission of the criminal act provided that the potential punishment involved is no more severe than a fine.</p> <p>Ad iii) According to the Criminal Code, section 16: "Persons who, at the time of the act, were deemed to have been irresponsible on account of mental illness or a state of affairs comparable to mental illness are not punishable. The same shall apply to persons who are severely mentally defective. [...]" Furthermore, "persons who are slightly mentally defective, are not punishable, except in special circumstances. The same shall apply to persons in a state of affairs comparable to mental deficiency".</p> <p>If such persons are found to have violated the criminal code, they will not be sentenced to prison in a traditional way. Instead, the Criminal Code, section 68-70 provides for treatment and other legal consequences.</p> <p>Ad iv) If a person is found to have a need of e.g. treatment, activation or supervision the court can set such measures as a condition for a conditional sentence, if the crime is not of a very serious nature, cf. criminal code, chapter 7.</p> <p>At the time of parole similar conditions can be set.</p>
<b>Estonia</b>	<p>(a) Under Estonian legislation there exists a mechanism for identifying suspects belonging to "vulnerable groups". According to the Code of Criminal Procedure the official conducting criminal proceedings must identify the suspect's age, his physical and mental capabilities so as to ensure that the suspect understands the meaning and the goal of the proceedings.</p> <p>(b) Which categories of vulnerable suspects exist? The law foresees special treatment for the following categories:</p>

	<ul style="list-style-type: none"> <li>- minors</li> <li>- foreigners</li> <li>- persons with a physical handicap mental</li> <li>- persons with a mental handicap</li> </ul> <p>(c) According to the Code of Criminal Procedure (§ 38) the participation of criminal defence counsel in criminal proceedings is mandatory:</p> <p>1) in criminal matters of minors until the minors attain the age of majority;</p> <p>2) in criminal matters of persons who due to physical or mental disabilities are not capable of exercising their right of defence by themselves.</p> <p>In addition it is possible to place the minor (who is a suspect, accused or accused at trial) under the supervision of his or her parents, guardians, curators, or the administration of educational, childcare or medical institutions. In that case the supervisor has to give a written commitment to ensure the appearance of the minor who is a suspect, accused or accused at trial before a preliminary investigator or a court, and to ensure his or her good conduct.</p>
<b>Finland</b>	<p>(a) Penal code, chapter 3, (see annex 2). In addition there are rules which allow courts to order examination of the mental state of the person charged. The examination is conducted in mental hospital.</p> <p>(b) Minors (under 15 years of age not criminally liable), insane persons, temporarily deranged persons and persons not in full possession of his mental faculties.</p> <p>(c) Criminal liability either doesn't apply at all or in measuring the sentence certain deductions apply. In addition, court can order a person, that according to the examination is not in full possession of his mental faculties or is insane and clearly in need of treatment, to be ordered taken into a mental hospital for treatment.</p>
<b>France</b>	<p>(a) En droit français, certaines catégories de personnes sont considérées comme devant, soit du fait de leur âge, soit du fait d'un handicap, faire l'objet de mesures procédurales particulières lorsqu'elles sont retenues pour les nécessités de l'enquête par les services de police. A ce titre, elles sont considérées comme étant des personnes vulnérables. C'est le cas des personnes mineures et des personnes atteintes de surdit�.</p> <p>(b) Le code de proc�dure p�nale ne pr�voit pas de r�gles sp�cifiques permettant l'identification des suspects appartenant � des "groupes vuln�rables". Cette identification rel�ve de l'appr�ciation des enqu�teurs qui peuvent y proc�der gr�ce � leurs pouvoirs g�n�raux d'enqu�te et la possibilit� d'ordonner �galement des examens.</p> <p>Ainsi, s'agissant des personnes mineures, la d�termination de l'�ge d'un suspect se fait en premier lieu en fonction des dires de la personne, qui sont v�rifi�s par le contr�le de ses pi�ces d'identit� et le cas �ch�ant aupr�s de ses civilement responsables. Des investigations peuvent �tre effectu�es �galement au service d'�tat civil du lieu de naissance. En cas de doute sur l'�ge d'un suspect mineur et en l'absence d'autre �l�ment, il peut �tre proc�d� � des examens osseux.</p> <p>S'agissant des personnes atteintes de surdit�, ce sont les circonstances de fait qui permettent � l'enqu�teur de constater ce handicap. Des examens m�dicaux peuvent �galement �tre pratiqu�s en urgence afin de constater</p>



	<p>la surdité.</p> <p>(c) Il convient de rappeler avant d'énumérer les règles applicables aux mineurs et aux personnes atteintes de surdité le régime applicable aux personnes majeurs. Ainsi, sous réserve des régimes de garde à vue particuliers, en matière de terrorisme, de stupéfiants et de criminalité organisée (voir infra), la garde à vue peut durer 24 heures, pouvant être renouvelée 24 heures, sans que la présentation devant le magistrat soit obligatoire. La personne gardée à vue peut demander à faire aviser ses proches - le magistrat ayant toutefois la possibilité pour les nécessités de l'enquête de différer cet avis- , à faire l'objet d'un examen médical et à s'entretenir avec un avocat dès la première heure de garde à vue (art. 63 à 63-4 du CPP).</p> <p>De manière générale, sans qu'il n'y ait de différence entre les personnes majeures ou les personnes mineures, il y a lieu de noter pour mémoire que la personne gardée à vue est informée au début de la mesure qu'elle a le choix de faire des déclarations, de répondre aux questions qui lui seront posées ou de se taire (art.63-1 du CPP).</p> <p>Enfin, si la personne est remise en liberté à l'issue de la garde à vue sans qu'aucune décision n'ait été prise par le procureur de la République sur l'action publique, la personne est informée qu'elle peut interroger le procureur de la République sur la suite donnée ou susceptible d'être donnée à la procédure. Dans le mois suivant la réception la demande, le procureur de la République doit prendre une décision sur l'action publique ou demander l'autorisation du Juge de la liberté et de la détention pour pouvoir poursuivre l'enquête (art.77-2).</p> <p>- S'agissant des personnes mineures, l'article 4 de l'ordonnance du 2 février 1945 relative à l'enfance délinquante prévoit un régime différent selon que le mineur est âgé de 10 à 13 ans, de 13 à 16 ans ou de 16 à 18 ans, en ce qui concerne sa mise à disposition auprès des services de police pour les nécessités de l'enquête.</p> <p>Les mineurs de 10 à 13 ans peuvent faire l'objet d'une mesure de retenue d'une durée de 10 heures, décidée après autorisation d'un magistrat si les faits pour lesquels il est soupçonné sont punis d'au moins sept ans d'emprisonnement, pouvant à titre exceptionnel et après présentation devant un magistrat être prolongée de 10 heures. Ses parents, son tuteur ou le service auquel il est confié doivent immédiatement être avisés. Le mineur de 10 à 13 ans fera également l'objet d'un examen médical et aura droit à un entretien avec un avocat dès le début de la retenue.</p> <p>Les mineurs de 13 à 16 ans peuvent être placés en garde à vue durant 24 heures. Une prolongation de cette mesure pour une nouvelle durée de 24 heures peut être décidée si les faits pour lesquels il est retenu sont punis d'au moins cinq ans d'emprisonnement et après présentation devant un magistrat. Ses parents, son tuteur ou le service auquel il est confié doivent être immédiatement avisés. Le mineur fera l'objet d'un examen médical et pourra à sa demande s'entretenir avec un avocat dès la première heure de garde à vue. Lorsque le mineur n'a pas sollicité l'assistance d'un avocat , cette demande peut être également faite par ses représentants légaux.</p> <p>Le mineur de 16 à 18 ans peut faire l'objet d'une mesure de garde à vue de 24 heures, pouvant être renouvelée 24 heures, après présentation devant un magistrat. Ses parents, son tuteur ou le service auquel il est confié doivent être immédiatement avisés. Il peut à sa demande faire l'objet d'un examen médical et s'entretenir avec un avocat dès la première heure de garde à vue.</p> <p>Par ailleurs, l'interrogatoire d'un suspect mineur fait l'objet d'un</p>
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	<p>enregistrement audio-visuel (voir point 5.b)</p> <p>- S'agissant des personnes atteintes de surdit�, l'article 63-1 du CPP pr�voit l'assistance d'un interpr�te en langue des signes ou par toute personne qualifi�e ma�trisant un langage ou une m�thode permettant de communiquer avec des sourds. Il peut �galement �tre recouru � tout dispositif technique permettant de communiquer avec une personne atteinte de surdit�.</p>
<b>Germany</b>	<p>(a) Special mechanisms for identifying suspects belonging to vulnerable groups include, in particular, anthropological or medical reports, which may, for example, be concerned with the age of a defendant (at the time of the offence) or his mental state (at the time of the offence). Pursuant to Section 81 paragraph 1 of the Code of Criminal Procedure [Strafprozessordnung, StPO], after hearing an expert and defence counsel, the court may order that the accused be admitted to a public psychiatric hospital and be held under observation there. However, an order of this type presupposes strong suspicion of a criminal offence and may not be disproportionate to the importance of the proceeding and the expected penalty or measure of reform and prevention. The period of committal must not exceed a total period of six weeks. Section 81a paragraph 1 sentence 1 StPO provides for physical examination of the accused for the establishment of facts that are of importance for the proceedings. Section 81b StPO allows measurements and similar measures to be taken in so far as is required for the purposes of conducting the criminal proceedings.</p> <p>(b) In the first place, juveniles, i.e. persons over fourteen but under eighteen at the time of the offence, and young adults, i.e. persons over eighteen but under twenty-one at the time of the offence (Section 1 paragraph 2 of the Juvenile Court Act [Jugendgerichtsgesetz, JGG] are considered particularly vulnerable. Pursuant to Section 19 of the Criminal Code [Strafgesetzbuch, StGB], persons under the age of fourteen at the time of committing an act are generally considered to lack capacity to be judged guilty and therefore are not criminally responsible. Other categories of particularly vulnerable defendants include defendants with disabilities – particularly with respect to faculty of language and hearing – and defendants who are foreign nationals; these aspects will be addressed in greater detail in connection with responses to the later questions.</p> <p>(c) The prosecution of juveniles and young adults is subject to the provisions of the Juvenile Court Act [JGG], which provide for deviations from the provisions governing proceedings involving adults in many different ways. With respect to the particular treatment of this group of people, attention should be drawn to the following special rules of procedure: Pursuant to Sections §§ 33 et seq. JGG, special juvenile courts have been set up. Section 36 JGG provides for public prosecutors specialising in juvenile cases to be appointed for proceedings under the jurisdiction of the juvenile courts. Pursuant to Section 37 JGG, judges and public prosecutors in juvenile courts should have a background in education and have experience of youth education. The men and women proposed as lay assessors should also, pursuant to Section 35 paragraph 2 sentence 2 JGG, have a background in education and have experience of education of young people. Section 38 JGG regulates juvenile court assistance. This is provided by</p>

	<p>the youth welfare offices in conjunction with the youth welfare associations. Juvenile court assistance officers show educational, social and welfare aspects to best advantage in proceedings before the juvenile courts. To this end they support the authorities involved by researching the defendant's personality, development and environment and giving their views on the measures to be taken. In cases where the defendant is in detention, they provide an accelerated report on the findings of their investigations.</p> <p>Pursuant to Section § 43 paragraph 1 JGG, domestic and family circumstances, personal background, previous conduct of the defendant and any other circumstances which may help to assess the defendant's psychological, intellectual and personal character should be communicated as soon as possible once proceedings have been started. The parent or legal guardian and the statutory representative, school and vocational instructor should be called to the hearing where possible. The school or vocational instructor is not called to the hearing where this could result in unwelcome problems for the juvenile, specifically the loss of his training place or job. Juvenile court assistance officers should be called on throughout proceedings involving a juvenile; this should take place at as early a stage as possible. The juvenile court assistance officers must always be consulted prior to orders being issued; where a care order is being considered, the officers should also give their views as to whom should be appointed as care assistant.</p> <p>Pursuant to Section 43 paragraph 2 JGG, examination of the defendant shall be carried out where necessary, specifically to determine his level of development or other characteristics significant to the proceedings. If possible, an expert qualified to examine young people should be engaged to carry out the order.</p> <p>Pursuant to Section 44 JGG, the public prosecutor or the president of the juvenile court should examine the defendant, before the charge is made, if a young offender sentence is likely.</p> <p>Pursuant to Section 46 JGG, the public prosecutor should present the essential findings of the investigations in the charge sheet in such a way that, wherever possible, the defendant's social and educational development would not be adversely affected as a result of the charge having been read.</p> <p>Pursuant to Section 48 paragraph 1 JGG, proceedings before the trial court, including the pronouncement of decisions, are not public.</p> <p>Pursuant to Section 54 paragraph 2 JGG, the grounds for a judgment are not notified to the accused if this could adversely affect his social and educational development.</p> <p>In so far as the defendant has a general right to be heard, to submit questions and applications or to be present at investigations, this right also extends to the parent or legal guardian and the statutory representative (Section 67 paragraph 1 JGG).</p> <p>If notification to the defendant is prescribed, the corresponding notification should be addressed to the parent or legal guardian and the statutory representative (Section 67 paragraph 2 JGG).</p> <p>The rights of the statutory representative to choose defence counsel and to lodge a legal remedy also apply to the parent or legal guardian (Section 67 paragraph 3 JGG).</p> <p>The judge may only divest the parent or legal guardian and the statutory representative of these rights if they are suspected of being involved in the offence committed by the defendant, or if they have been convicted for involvement. If these conditions apply to either the parent or legal</p>
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	<p>guardian <u>or</u> the statutory representative, the judge may divest both parties of such rights if they are likely to be misused. If the parent or legal guardian and the statutory representative have been divested of their rights, the judge in the court dealing with matters relating to guardianship shall appoint a guardian to safeguard the interests of the defendant in the criminal proceedings pending. The main hearing is suspended until a guardian has been appointed (Section 67 paragraph 4 JGG).</p> <p>Where there is more than one parent or legal guardian, each person may exercise the rights of the parent or legal guardian specified in said act. For the purposes of the main hearing or other court hearings, the absent parent or legal guardian is considered to be represented by the parent or legal guardian present. Where notifications or summonses are prescribed, they need only be addressed to one parent or legal guardian (Section 67 paragraph 5 JGG).</p> <p>The presiding judge appoints defence counsel for the defendant pursuant to Section 68 JGG if</p> <ol style="list-style-type: none"> <li>1. defence counsel would be appointed for an adult,</li> <li>2. the parent or legal guardian and the statutory representative have been divested of their rights pursuant to the JGG,</li> <li>3. there is a likelihood of the defendant being committed to an institution for the preparation of a report on his level of development (Section 73 JGG) or</li> <li>4. the defendant is being placed in remand detention or provisionally committed pursuant to Section 126a StPO if he is under eighteen; defence counsel is appointed without delay.</li> </ol> <p>The presiding judge may also appoint a legal advisor for the defendant at any stage of the proceedings if compulsory representation by defence counsel does not apply (Section 69 paragraph 1 JGG); in cases of compulsory representation by defence counsel, the defendant is given defence counsel in accordance with the above.</p> <p>The parent or legal guardian and the statutory representative may not be appointed as legal advisor if this would be likely to adversely affect the defendant's social and educational development (Section 69 paragraph 2 JGG).</p> <p>The legal advisor may be granted permission for inspection of files. In other respects he has the same rights as defence counsel in the main hearing (Section 69 paragraph 3 JGG).</p> <p>Juvenile court assistance officers and, where appropriate, the judge in the court dealing with matters relating to guardianship, the family court judge and the school are informed of the initiation and outcome of proceedings. They must notify the public prosecutor if they know of other criminal proceedings pending against the defendant. The family court judge and the judge in the court dealing with matters relating to guardianship shall also notify the public prosecutor of any measures under family and guardianship law and their amendment and revocation, unless it is apparent to the family court judge and the judge in the court dealing with matters relating to guardianship that this information should not be communicated in order to safeguard the interests of the defendant or other individual affected by the notification (Section 70 JGG).</p> <p>Until such time as the judgment enters into legal force, the judge may issue provisional orders concerning the juvenile's social and educational development or propose the granting of specific social benefits in accordance with the law governing the welfare of children and young people (Book 8, Social Security Code [Sozialgesetzbuch]) (Section 71 paragraph 1 JGG).</p>
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	<p>The judge may order provisional committal to a suitable young people's welfare home if this is also advisable with respect to the expected measures, in order to protect the juvenile from further risk to his development, in particular the risk of new offences being committed (Section 71 paragraph 2 JGG).</p> <p>Remand detention may only be imposed and executed if its purpose cannot be achieved by means of a temporary order concerning his social and educational development or other measures. The particular problems experienced by young people in detention must also be taken into account in examining proportionality. If remand detention is imposed, the warrant of arrest shall cite the reasons why other measures, particularly provisional committal to a young people's welfare home, are inadequate and remand detention is not disproportionate (Section 72 paragraph 1 JGG).</p> <p>If the juvenile is under sixteen, the imposition of remand detention on the grounds of danger of absconding pursuant to Section 72 paragraph 2 JGG is only admissible if he</p> <ol style="list-style-type: none"> <li>1. has already evaded the proceedings or has tried to escape from institutions or</li> <li>2. has no habitual residence or fixed abode in the territorial scope of said law.</li> </ol> <p>Decisions on the execution of a warrant of arrest and on the measures to avert its execution are taken by the judge who issued the warrant of arrest or, in urgent cases, by the juvenile court judge in whose district the period of remand detention would have to be served (Section 72 paragraph 3 JGG).</p> <p>Under the same conditions applicable to the issue of a warrant of arrest, provisional committal to a young people's welfare home may also be ordered pursuant to Section 71 paragraph 2 JGG. In this case the judge may subsequently replace the committal order with a warrant of arrest if this proves necessary (Section 72 paragraph 4 JGG).</p> <p>If a juvenile is in remand detention, the proceedings shall be accelerated (Section 72 paragraph 5 JGG).</p> <p>The judicial decisions concerning remand detention may all be taken by the competent judge, where important reasons dictate, or may be transferred to another juvenile court judge (Section 72 paragraph 6 JGG).</p> <p>The juvenile court assistance officers shall be notified without delay of the execution of a warrant of arrest; the issue of a warrant of arrest should already have been notified to them. The juvenile court assistance officers shall be notified of the provisional arrest of a juvenile if it is likely, given the status of the investigations, that the juvenile will be brought before the judge pursuant to Section 128 StPO (Section 72a JGG).</p> <p>In connection with the preparation of a report on the defendant's level of development, the judge may, after hearing an expert and defence counsel, order that the juvenile be admitted for observation to a suitable institution for the examination of young people. In the preparatory proceedings, the decision is made by the judge who would be responsible for opening of the main hearing (Section 73 paragraph 1 JGG).</p> <p>Immediate complaint against the decision may be made and shall have a delaying effect (Section 73 paragraph 2 JGG).</p> <p>The period of detention in the institution may not exceed six weeks (Section 73 paragraph 3 JGG).</p> <p>With respect to the other groups of defendants afforded protection (defendants with disabilities, in particular with respect to faculty of language and hearing, and foreign nationals), see the response to later</p>
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	<p>questions which deal specifically with these groups.</p> <p>The right to life and inviolability of the person pursuant to Article 2 paragraph 2 sentence 1 of the Basic Law [Grundgesetz] and the principle of reasonableness mean that other vulnerable defendants, such as diabetics and those infected with HIV, shall also be treated with due regard to their particular situation at all times. In particular, they shall be granted medical assistance where necessary.</p> <p>No main hearing shall be conducted where the defendant is unable to follow the proceedings; proceedings shall be suspended until the capacity to proceed in court is restored (Sections 205, 206a StPO).</p>
<b>Greece</b>	<p>(a) There is no formal general mechanism for identifying suspects belonging to vulnerable groups within the Greek legal system. It should be noted, however, that special criminal law provisions do apply in cases of suspects and/or defendants who are minors, or persons using drugs and other psychotropic substances. The law is unclear on the method to be used in order to identify persons belonging to any such group. Therefore, the state organs vested with investigative authorities enjoy discretionary powers on the methods chosen when making such identification.</p> <p>(b) Greek Criminal law provides for a qualified treatment of persons who are minors and to those who suffer from drug addiction. As to minors, the applicable domestic law is, mainly: the Greek Constitution (article 21 on the protection of youth and article 96 establishing juvenile courts), the Criminal Code [hereinafter: CrC] (Chapter 8 of the General Part, ill-titled ‘Juvenile Criminals’ and also various articles of the Special Part pertaining to juvenile victims), the Code of Criminal Procedure [hereinafter: CCrP] (see further <i>infra</i>), the Code of Basic Regulations for the Treatment of Prisoners (articles 53, 54, 80 and 90), Law 5098/1931 on juvenile courts, Necessity Law 2724/1940 on the organisation and function of reformatory juvenile establishments and also Presidential Decree 49/1979 and Laws 2793/1954, 378/1976 and 1071/1980 on the service of juvenile probation officers.</p> <p>Persons who use drugs and other psychotropic substances are also subject to qualified treatment, as set forth in Law 1729/1989 ‘on the fight against drugs and other provisions’, as in force today after repeated and extensive amendments.</p> <p><b>I. Minors</b></p> <p><i>The investigative authorities</i></p> <p>In cases involving the commission of misdemeanours<sup>90</sup>, members of the police force acting as investigative authorities<sup>91</sup> have the authority to file the case and not pursue further investigation<sup>92</sup>. In addition, Greece is one of the countries where special police units have been created to deal with minor delinquents. Thus, by virtue of presidential decree 95/1987, special departments on minors have been created in the Police Administration of Attica, a warmly welcomed move that has not been expanded in other areas of the Greek territory to this date. The main task of these departments is to have the exclusive handling of cases of minor delinquents and minor victims. In particular, this department has the competence to proceed with the arrest of minors believed to have committed unlawful acts, to detain them in especially created secure areas, to conduct the pre-trial investigation and to cooperate with the</p>

<sup>90</sup> Such crimes comprise the bulk of unlawful acts committed by minors.

<sup>91</sup> According to article 33 of the Code of Criminal Procedure, the investigative authorities include in general the judges serving in the courts of misdemeanours, the justices of the peace and members of the police force.

<sup>92</sup> See article 14 of law 1481/1984 ‘on the organisation of the ministry of public order’.

	<p>competent judicial authorities and the various state services on minors.</p> <p><i>The juvenile courts</i></p> <p>Juvenile Courts have been especially constituted to provide welfare for delinquent minors on the one hand and justice on the other hand. They enjoy constitutional protection, in accordance to article 96 of the Greek Constitution. The existing framework of applicable laws as regards to the juvenile courts provides considerable differentiations as to their <i>modus operandi</i>, when compared to the criminal courts in general.</p> <p>A short overview of the existing system indicates the following:</p> <ol style="list-style-type: none"> <li>1. The notion of ‘hot pursuit’ is inexistent or, at least, rarely applicable. Even when applied, the accused will be presented to the special district attorney for minors, and not referred to court.</li> <li>2. The pre-trial investigation may be conducted by a special investigator (trial examiner) (article 33 CCrP).</li> <li>3. The main investigation is conducted to a special investigator, who may allow for evidence to be collected by an officer serving at the service for minors (article 4 and 239 para. 2 CCrP).</li> <li>4. If the minor is more than 12 years old, restrictions or temporary detention are allowed only if the accused is charged for an act punished with a temporary term of more than ten years (article 282 CCrP).</li> <li>5. Cases of minor delinquents are tried by the juvenile courts, composed of special judges in single member or three member chambers, as provided (article 7 and 113 CCrP).</li> <li>6. The judges decide whether the accused committed the act for which he is so accused, and not whether the accused is guilty of such act.</li> <li>7. The special district attorney on minors is always present. The officer of the services for minors is usually present, while counsel for the accused is not always present.</li> <li>8. Any accused under the age of seventeen is examined by the court without being under oath.</li> <li>9. The juvenile court may order the temporary withdrawal of the accused from the courtroom if this is to the accused person’s best interest.</li> <li>10. Hearings at the juvenile courts are held behind closed doors, with very strict exceptions applying.</li> <li>11. The juvenile court usually imposes reformatory or therapeutic measures and not penalties or other special security measures (articles 121 and 127 CrC). Minors older than seventeen may receive a reduced penalty (articles 83 and 130 CrC).</li> <li>12. The measure imposed is determined in accordance to the minor’s best interest and needs, taking into consideration the relevant report of the officer serving at the service of minors.</li> <li>13. In general, there is no method of appeal against judgments made by the juvenile court.</li> <li>14. There is no <i>res judicata</i> emanating from the decisions of the juvenile courts, since the law provides for the modification or substitution of the measures imposed by the juvenile court (articles 80, 124, 130 and 131 CrC).</li> </ol>
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<sup>93</sup> Law 1729/1987, article 13 para. 2.

<sup>94</sup> *Ibid.*, para. 3.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*, para. 1.

<sup>97</sup> *Ibid.*, article 14 para. 1.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

	<p>15. Criminal records of reformatory measures are destroyed when the minor reaches the age of seventeen; criminal records of confinement in a penitentiary establishment are destroyed five years after release if the total time served is less than one year or 8 years after release if the time served is longer than a year (article 578 CCrP).</p> <p>II. Persons using drugs and other psychotropic substances</p> <p>The legal framework in this instance is less developed when compared to the existent framework for minors. Thus no particular procedural safeguards are recognised by law, although they may exist in practice. The law, however, well accepts cases where the accused is addicted to drugs and other psychotropic substances. The court so establishes by taking into consideration expert's reports submitted by psychiatrists and other medical practitioners, including laboratory reports<sup>93</sup>. Even in the pre-trial stage, if the suspect or the accused claims of being addicted, the person conducting the investigation is required to order for an expert's report<sup>94</sup>. In all cases, any such statement by the suspect or the accused is duly recorded<sup>95</sup>. The expert's report must indicate the nature of the addiction (physical or other), the kind and degree thereof and also the possible drug used and the daily amount taken, while it may address the issue of the impact the addiction has on the suspect's or the accused person's accountability.</p> <p>If the addiction is established and the court finds that the person cannot overcome it on his own power, the person, if found guilty, is submitted to special treatment<sup>96</sup>. Thus the court may refer the person to a special therapeutic establishment or a special department of a detention establishment<sup>97</sup>. This referral may also be ordered during the pre-trial period by the investigative authority, if the district attorney so agrees<sup>98</sup>. The period of time while the special treatment lasts is considered part of the temporary detention or, in cases of conviction, part of the time spent in sentence<sup>99</sup>.</p>
<b>Hungary</b>	<p>(a) There is no such mechanism. Certain types of vulnerabilities, such as minor age, are obvious. The date of birth as an important component of identification appears on all official documents and records. Minor age is a factor that is very important in the criminal procedure as many special rules are attached to it.</p> <p>It is always possible for the investigating authority and for the court to request an expert's opinion, for instance on mental health problems of the suspect, whenever the officer/prosecutor/judge finds it necessary. If the suspect belongs to a vulnerable group for which the Criminal Procedure Act provides for compulsory legal assistance, and the authorities fail to recognise such situation, it is considered a gross denial of procedural rights of the suspect, thus, the evidence so gathered is inadmissible.</p> <p>With regard to vulnerabilities related to health, such as disabilities, when the suspect is taken into custody (eg. to pre-trial detention), he or she is examined immediately by a member of the medical staff, and, within 72 hours, by a medical doctor. Any disability becomes known during these examinations at the latest.</p> <p>(b) Which categories of vulnerable suspects exist?</p> <p>Special rules apply if (1) the suspect is between the age of 14 and 18 at the time of the commitment of the crime [ie the suspect is a 'young person'], or (2) he/she is deaf, mute, blind, (3) has mental illness, (4) does not speak the language of the procedure, or (5) for any other reason, is incapable of defending himself or herself in person.</p>



	<p>(c) In case the person is not familiar with the language, an interpreter shall be provided.</p> <p>If the person under criminal investigation/charged with a crime is a young person, is deaf, mute, blind, has mental illness, does not speak the Hungarian language or the language of the proceedings, or for any other reason is incapable of defending himself or herself in person, the defence by a counsel is compulsory in the criminal procedure.</p>
<b>Ireland</b>	<p>The main provision in relation to vulnerable groups relates to minors. The Children Act, 2000 provides detailed provisions in relation to children i.e offenders under eighteen years. The Act provides a framework of safeguards for protection of children, including diversion of first time and non serious offenders away from the criminal justice system; it provides safeguards on how children must be treated in garda ( police) custody; it provides for the operation and special proceedings of the children's Court; it gives the courts the power to impose a wide range of non-custodial sanctions on child offenders; it provides for child detention schools and centres; and it sets down the circumstances in which detention can be ordered in such schools or centres and it provides for the re-integration of child offenders back into the community.</p> <p>Special provisions apply to the trial of child offenders. In the District Court, by and large, proceedings against juveniles must be held either at a different building or room or on a different day or time from those in which the normal sittings would be held.</p> <p>In addition the Children Act provides that a child shall not be questioned by the gardaí (police), as a general rule, except in the presence of a parent or guardian or, in their absence, another adult. In connection with what might be termed invasive samples for the purpose of forensic testing, the same can only be taken from persons under the age of fourteen with the consent of their parent/guardian. In relation to mentally handicapped persons recognised as such or suspected to be such, the custody regulations ( Statutory Instrument no. 119 of 1987) provide that they should not be interviewed except in the presence of a responsible adult.</p> <p>While other vulnerable groups are not specifically identified, each individual's constitutional rights must be upheld and everyone is entitled to a constitutional guarantee of a fair trial.</p> <p>Insofar as (b) and (c) are concerned the Criminal Justice Act, 1999 contains a number of measures dealing with, not suspects, but with other vulnerable groups - witnesses and jurors. The provisions</p> <ul style="list-style-type: none"> <li>- allow persons likely to be in fear or subject to intimidation to give evidence through a live television link and for such evidence to be video recorded</li> <li>- create a new statutory offence with a penalty of a fine and/or up to 10 years imprisonment for harm, threats to or intimidation of witnesses, potential witnesses, jurors, potential jurors or persons assisting the Garda Síochána with their investigations where it is the intention to cause the investigation or the course of justice to be obstructed, perverted or interfered with.</li> <li>- create an offence with a penalty of a fine and/or up to 5 years imprisonment for attempting to ascertain the whereabouts, new name or</li> </ul>

	other particulars related to the new identity of a witness relocated by the Garda Siochana for their protection.
<b>Italy</b>	<p>(a) Yes. For minors – and especially at trial – the special provisions on the procedure to be used when the defendant is a minor (Presidential Decree 448 of 1988) make provision for an assessment procedure (expert report) in respect of minors, that may also be initiated <i>proprio motu</i>, in any case of doubt (Article 8).</p> <p>(b) Different procedural rules apply to:  Minors at the time of commission of the offence;  Some groups of disabled people, for instance the deaf, mute and deaf-mute, for whom there is provision for particular types of assistance at trial;  People unable, as a result of physical and mental disabilities, consciously to take part in the trial.</p> <p>(c) In the case under 1) there is a special procedure, taking a different form from the procedure used for defendants of majority age; in the case under 2) provision is made for special types of assistance, such as the presentation of questions in writing, interpreting assistance, etc. (see Article 199, CCP (Code of Criminal Procedure)); in the case under 3) criminal proceedings may be suspended (possibly even at the investigation stage) and a special guardian appointed, although decisions to prosecute may still be taken (see Articles 70-73 CCP).</p>
<b>Latvia</b>	--
<b>Lithuania</b>	<p>a) The Code of Criminal Procedure of the Republic of Lithuania does not define the term “vulnerable persons”. On the other hand, the Code contains many provisions which aim to ensure the rights of such persons and to provide them with guarantees. Such provisions exist for various categories of persons: minors, dumb persons, blind persons, other persons with physical or mental handicaps, etc.  Because such attributes are adequately defined (e.g. minors – by age; blind and visually handicapped persons, deaf persons and persons with other physical or mental handicaps – by the possession of a special personal document or certificate from a health body; lack of knowledge of the procedural language – by means of a statement by the person concerned, etc.), no identification problems arise.</p> <p>b) As stated above, the Code of Criminal Procedure provides for certain special rights and procedural guarantees for various categories of persons: minors, dumb persons, blind persons, other persons with physical or mental handicaps, persons lacking knowledge of the Lithuanian language, etc. These provisions are not systematised and are set out at various points in the Code.</p> <p>c) If specific provisions of the Code of Criminal Procedure provide for a certain right or guarantee for a certain category of persons, they must be applied (unless they are not binding).  Minors have the most procedural rights and guarantees under the Code of Criminal Procedure. Above all, under Article 53, representatives may take part in proceedings and defend the interests of minors or persons duly deemed to have a legal incapacity taking part in the proceedings except in cases in which this goes against the interests of the minor or persons having a legal incapacity. By law, representatives may be the parents, step-parents, guardians or carers of a suspect, accused or convicted person or a victim, bodies which act as the guardians of or care for a suspect, accused or convicted person or a victim, or other authorised persons. Moreover, when hearing cases in which the accused is a minor, the participation of a defence lawyer is required (Article 51 of the Code</p>

	<p>of Criminal Procedure). Where an accused who is a minor has not appointed a defence lawyer, the latter is appointed by the court hearing the case. Under the Law on state-guaranteed legal aid, such legal aid is granted free-of-charge.</p> <p>Shorter supervision measures and periods of detention (during the pre-trial investigation – not longer than 12 months in total) are applied to suspects who are minors. Moreover, Article 138 of the Code of Criminal Procedure provides for special supervision measures for minors – surrender to their parents, carers or other natural or legal persons which take care of children. Article 177 of the Code of Criminal Procedure prohibits the publication of data obtained during pre-trial investigations relating to minors who are suspects or victims.</p> <p>When the court is hearing criminal cases in which the accused is blind, deaf, dumb or has another physical or mental handicap and is unable to make use of his right to a defence, the participation of a defence lawyer is required (Article 51 of the Code of Criminal Procedure). Where such an accused person has not appointed a defence lawyer, the latter is appointed by the court hearing the case. Under the Law on state-guaranteed legal aid, such legal aid is granted free-of-charge.</p> <p>The participation of a defence lawyer is also required in cases in which the accused does not have knowledge of the procedural language. Where such an accused person has not appointed a defence lawyer, the latter is appointed by the court hearing the case. Under the Law on state-guaranteed legal aid, such legal aid is granted free-of-charge. Moreover, such a person is entitled to make statements, give evidence and explanations, submit applications and appeals, and speak his native or another known language in the court. In all these cases, and also when examining the files of the case, the participants in the proceedings are entitled to make use of translation/interpreting services free-of-charge. The documents of the case which, under the provisions of the Code of Criminal Procedure, are supplied to the suspect, accused or convicted person must be translated into that person's native language or into another language of which he has knowledge.</p>
<b>Luxembourg</b>	1) Il n'y a pas de système d'identification des suspects, mais le Luxembourg dispose d'une législation spécifique concernant les mineurs, à savoir la loi du 10 août 1992 sur la protection de la jeunesse.
<b>Malta</b>	<p>(a) Social workers.</p> <p>(b) Which categories of vulnerable suspects exist? Juveniles, drug addicts.</p> <p>(c) Presence of social workers.</p>
<b>The Netherlands</b>	<p>a. In the Dutch legal system the court decides if the suspect belongs to a "vulnerable group". The court can ask for a closer investigation before making the identification (for example article 509a, 509b Code of Criminal Proceedings).</p> <p>b. The following vulnerable suspects exist in the Netherlands: minors, deaf or blind people and people who are mentally ill and not able to understand proceedings.</p> <p>c. Dutch legislation does provide in special measures for the vulnerable suspects. For the minor suspect is a juvenile court (article 488 – 509). For the deaf or blind suspect are measures to help them understand the proceedings (for details see question 8). And for a suspect who seems mentally ill the court session will be adjourned. If the suspect is recovered the proceedings will go on (article 16). The court may ask for expert medical advice from a psychiatrist before it takes its decision.</p>
<b>Poland</b>	(a) and (b) In the Polish legal system the groups within suspects that

	<p>enjoy a special status are (art. 79 of the Code of Criminal Procedure):</p> <ol style="list-style-type: none"> <li>1. Minors</li> <li>2. Handicapped persons in terms of senses: deaf, dumb, blind</li> <li>3. Persons with respect of whom there is a good reason to doubt their sanity.</li> </ol> <p>While establishing the sanity, mental development, the capability of perception and recollection of observations by suspects, the authority that conducts the proceedings relies on the opinions delivered on its demand by expert psychiatrists and psychologists.</p> <p>Moreover, the special measures (<i>ex officio</i> defence counsel) may apply when the court deems it necessary because of circumstances impeding the defence.</p> <p>(c) With respect to juveniles facing the risk of maladjustment or juveniles who committed an offence, being between 13 and 17 years of age, the provisions of Law on procedure applicable in cases relating to juveniles apply. The principles of criminal liability of juveniles who have attained 17 years of age (in cases of specifically determined offences also 15 years of age) are specified in the Polish Penal Code (Article 10). It prescribes the educational, therapeutic or corrective measures, provided for in the Law on procedure applicable in cases relating to juveniles, to be applied instead of punishment, with respect to juveniles who have committed misdemeanours.</p> <p>On top of that, with respect to all the aforementioned categories of suspects there exists:</p> <ul style="list-style-type: none"> <li>- an obligation to designate an <i>ex officio</i> defence counsel for them, unless they have a defence counsel of their choice</li> </ul> <p>With respect to the persons mentioned in the item 3 above:</p> <ul style="list-style-type: none"> <li>- an obligation to establish the level of sanity by two expert psychiatrists</li> </ul>
<b>Portugal</b>	<p>No. However, in the Portuguese penal process there are some specific rules, for certain categories of people, who could “correspond” to an idea of vulnerable categories.</p> <p>Therefore, in any Court proceedings, whenever the defendant is deaf, mute, illiterate, unable to speak Portuguese, under 21 years of age, or if a question is raised as to guilt, or diminished responsibility, the attendance of a defence lawyer is mandatory (article 64 of the Portuguese Criminal Code).</p> <p>There are also rules relating to the participation of people who are deaf, have hearing difficulties, or are mute (article 93 of the Portuguese Criminal Code).</p> <p>When one category of these people has to give a statement, the following rules are observed: a) a person who is deaf or who has a hearing difficulty is appointed a suitable sign-language or lip-speaking interpreter, or a note-taking interpreter, according to the needs of the defendant; b) a person who is mute and can write, may be asked questions orally, replying in writing. If this is not the case, and whenever required, an appropriate interpreter is appointed. The lack of an interpreter implies an adjournment of the proceedings. These rules are applied in all stages of proceedings and independently of the defendant’s position in the matter.</p> <p>Persons of less than 16 years of age are not required to answer allegations, the Educational Act (Act no. 166/99, of 14 September) being applicable. There is also a special regime for young persons between the ages of 15 and 21 (Act no. 401/82, of 23 September).</p>

	<p>(b) See previous answer.</p> <p>(c) See answer above.</p>
<b>Slovak Republic</b>	<p>The Criminal Code regulates in its provisions mandatory defence (also during the pre-trial proceeding) if the person is remanded in custody or is deprived of legal capacity or his legal capacity is restricted or is a juvenile or is an escaped prisoner.</p> <p>The other relevant mechanism of the criminal proceeding is when the counsel shall be mandatory if the prosecutor or court deem it necessary because they are in doubt about the capability of the accused person of proper defence - whether in view of his physical or mental handicap. The counsel is mandatory in cases of proceedings related to more serious offences and proceedings held in respect of extradition, imposition of protective treatment.</p> <p>The provisions about the mandatory counsel are applied during the enforcement procedures in cases similar to the above mentioned ones, as well.</p> <p>The Criminal Procedure provides to those who can not afford to pay the defence costs shall have the right to a free counsel or to the defence for a reduced legal fee.</p> <p>Another mechanism for providing protection for vulnerable groups of persons is the right of legal representative to represent the accused deprived of legal capacity or having a restricted legal capacity (right to represent in cases of choosing a counsel, filing motions, petitions, apply for legal remedies on behalf of accused). The prosecutor may in some specific cases appoint a guardian to act behalf of the accused.</p> <p>Under the provisions related to the inadmissibility of Criminal prosecution there is eliminated the possibility of the prosecution against minor person who may not be held criminally liable.</p> <p>The specific procedure which is applied in a case when the accused person declares that he can't speak language of the proceedings. The interpreter is assigned for translating the statements or written documents.</p> <p>The Criminal Procedure enables to ensure the specific protection (care) in cases of prosecution the offences perpetrated by the juveniles through a separate part so called „Proceedings against Juveniles“. It contains a special measures with the aim to consider the state of juveniles during the proceeding, such as mandatory defence counsel, examination of level of the intellectual and moral development, of nature, behavior and other important circumstances, the custody conditions, involvement of the youth authority during the proceeding, conditions of the main hearing, notification of decisions, persons that are authorized to file remedies in favour of juveniles, the Protective Education measure. The common feature during the whole criminal procedure against the juvenile shall be the given care with the aim to guarantee the achievement of the educational purpose of the proceeding. Authorities acting in criminal procedure shall act in the closest co-operation with facilities responsible for youth care or psychiatric care authorities.</p> <p>Under Act No. 141/1961 Coll. - the Code of Criminal Procedure, in cases of mandatory defence an accused in criminal proceedings has the right to be represented by a defence counsel who may be only a lawyer, when he/she cannot choose himself/herself a defence counsel for financial limitations. The presiding judge of the panel of judges is appointing the defence counsel and revoking the defence counsel when the reasons for mandatory defence have expired. In pre-trial procedure this competence is with the judge.</p>

	<p>If, in a criminal proceedings, a court determines that the convict does not have sufficient means to cover the costs of mandatory defence and therefore is entitled to free defence (Section 33 paragraph 2, Section 152 paragraph 1 letter b) of the Code of Criminal Procedure) the court issues a decision that on these grounds he/she does not have the duty to pay the fee and cash expenses already paid by the State to the defence counsel ex officio.</p>
<b>Spain</b>	<p>(a) There is no express mechanism in our legislation for identifying whether individual suspects belong to vulnerable groups. In practice, however, when this occurs, they are treated in a specific way as detailed in later responses to this questionnaire.</p> <p>(b) As stated in the reply to the previous question, there are no specific categories of vulnerable suspects. However language difficulties and deafness are dealt with in a specific way.</p> <p>(c) For cases of language difficulties and deafness, see the reply to Question 8.</p>
<b>Sweden</b>	<p>(a)–(c) The only “vulnerable group” which is identified in the Swedish legislation is youthful offenders.</p> <p>The rules on criminal proceedings against a suspect not yet 21 years old are laid down in the Act on certain provisions concerning youthful offenders (SFS 1964:167). Where no special rules apply, the general provisions of the Swedish Code of judicial procedure apply.</p> <p>A preliminary investigation against a person under the age of 18 must be conducted by a police or a prosecutor particularly suited for this work. A prosecutor must always be in charge of the preliminary investigation if there is reason to suspect that a person not yet 18 years old has committed an offence punishable with imprisonment for more than six months. If the young offender commits another offence, the new preliminary investigation must, if possible, be conducted by the same police officer and prosecutor.</p> <p>Preliminary investigations against juveniles must be conducted at particular speed. A preliminary investigation against a person under the age of 18 concerning an offence punishable with imprisonment for more than six months must be conducted at particular speed and must be concluded within six weeks of the announcement of the suspected offence. The question of prosecution must also be decided within the same period. The time limit can only be exceeded if necessary in consideration of the investigation or for other special reasons.</p> <p>Parents or other persons caring for the juvenile must be notified immediately if a person under the age of 18 is suspected of crime. They must also be convened for the questioning of the juvenile. The Social Welfare Committee must be notified as well if the juvenile has committed an offence punishable with imprisonment. If possible, representatives of the Social Services must be present when the juvenile is questioned.</p> <p>Juveniles may be subject to a waiver of prosecution. The general rules of the code of judicial procedure apply. In addition, the Act on certain provisions concerning youthful offenders contains special rules under which the young offender may be subject to a waiver of prosecution if he submits to support or care measures, or if it is obvious that the offence was committed rashly or wantonly.</p> <p>The juvenile must be notified of the waiver of prosecution at a personal visit to the prosecutor. The custodial parent and the representative of the Social Services should also be present.</p> <p>Before the question of prosecution is decided, a special inquiry must be made by the Social Welfare Committee. If the young offender is placed in</p>

	<p>care in a so-called section 12-home, the prosecutor must assess whether prosecution should be initiated. The principal of the home must be consulted.</p> <p>The Act also has special provisions on restriction of prosecution. If, after being given a waiver of prosecution, the juvenile is suspected of an offence committed before then, the prosecutor may decide not to commence the preliminary investigation or to close the preliminary investigation.</p> <p>The prosecutor has better possibilities of using summary penalty orders ("strafföreläggande") when the suspect is under the age of 18. Summary penalty orders can be issued if it is assumed that the young offender would be sentenced to a fine. As a main rule, notification of a summary penalty order must also be given at a personal meeting.</p> <p>The police may request a person between the ages of 15 and 18 to make good or limit the harmful effects of an offence if the young offender has admitted the offence or if it is otherwise obvious that he committed it.</p> <p>A person under the age of 18 can only be arrested on special grounds. A suspect under the age of 18 is entitled to have counsel assigned to him unless it is obvious that he has no need of an assigned counsel.</p> <p>As a main rule, proceedings against an accused not yet 21 years old must be presided over by a judge particularly appointed for the work. The same applies to lay judges. Custodial parents or others who are responsible for the care of the juvenile must be notified of the time of the trial. If the offence is punishable with imprisonment, they must be consulted, if consultation is possible and there are no special reasons why they should not be consulted.</p> <p>The cases must be tried so as not to attract attention. The court has greater possibilities of deciding that a case should be tried in camera.</p> <p>Proceedings against a person not yet 21 years old must be completed speedily. As a main rule, the trial of a case against an accused under the age of 18 must be conducted within two weeks of initiating prosecution if the offence is punishable with imprisonment for more than six months.</p> <p>Judgements against persons not yet 21 years old must be given orally at the trial if there is no particular impediment to such procedure.</p> <p>The responsibility of the Social Welfare Committee and its possibility of initiating measures for juveniles between the ages of 15 and 18 are the same as for younger age groups.</p> <p>For the age group 15 to 18 years, the Social Welfare Committee also receives a request from the prosecutor or the district court (tingsrätten) for an opinion on which to base the decision to be prepared concerning measures against crime. Such opinion must include a description of the measures decided by the Social Welfare Committee concerning the young offender and a schedule of the measures planned by the Social Welfare Committee in the light of the current situation. It must appear from the care plan what measure the local authority intends to implement, the scope of the measure and its contemplated duration. If the prosecutor so demands, the opinion can also include a description of the young offender's background, development and general situation in life. If the Social Welfare Committee has given an opinion about a defendant the court shall notify the Committee about the time and place for the main hearing.</p> <p>The Regulation on Preliminary Investigation Section 17-18 prescribes that a questioning with someone under the age of 18 shall be carried out so that there won't be any danger that the one being questioned could take any harm. Such an questioning shall be lead by a person with has</p>
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	special competence for questioning young persons.
<b>United Kingdom</b> (replies received both from England & Wales and from Scotland)	<p><u>England &amp; Wales</u></p> <p>(a) Yes. Vulnerable persons are identified in the Police and Criminal Evidence Act 1984 (PACE) and the Codes of Practice issued under the Act (or in Northern Ireland the Police and Criminal Evidence Order 1989 (PACE)) for the treatment and detention of suspects in police custody. Responsibility lies with the police custody officer to identify vulnerable persons when processing people into custody. Custody Officers are specially designated police officers responsible for ensuring that all persons in detention at the police station are treated in accordance with PACE and the Codes of Practice and that proper custody records are maintained.</p> <p>(b) Vulnerable suspects are identified as: juveniles, i.e. persons under the age of 17; those who are mentally handicapped or who appear to be suffering from a mental disorder; persons who are deaf or there is a doubt about their hearing, speaking ability or ability to understand English; persons who are blind, seriously visually handicapped or unable to read, and foreign nationals.</p> <p>(c) Yes. Vulnerable persons are afforded special protections by the Codes of Practice issued under the Police and Criminal Evidence Act 1984 (PACE). In particular:</p> <p><u>Juveniles, mentally disordered people and mentally handicapped people</u></p> <p>If a person is a juvenile, is mentally handicapped or appears to be suffering from a mental disorder, the custody officer must, as soon as practicable, inform the appropriate adult of the grounds for his detention and his whereabouts and ask the adult to come to the police station to see the person.</p> <p>In the case of a juvenile, an appropriate adult means:</p> <p>(i) his parent or guardian (or, if he is in care, the care authority or voluntary organisation. The term 'in care' covers all cases in which a juvenile is 'looked after' by a local authority under the terms of the Children Act 1989);</p> <p>(ii) a social worker; or</p> <p>(iii) failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the police.</p> <p>In the case of a person who is mentally disordered or handicapped:</p> <p>(i) a relative, guardian or other person responsible for his care or custody;</p> <p>(ii) someone who has experience of dealing with mentally disordered or mentally handicapped people but who is not a police officer or employed by the police (such as an approved social worker); or</p> <p>(iii) failing either of the above, another responsible adult aged 18 or over who is not a police officer or employed by the police.</p> <p>The appropriate adult is there to assist and advise the arrested person, who can consult privately with the appropriate adult at any time. Except in exceptional circumstances, a juvenile or a person who is mentally disordered or mentally handicapped must not be interviewed or asked to provide, or sign, a written statement in the absence of an appropriate adult.</p> <p>Where an appropriate adult is present at an interview the purposes of his presence are, first, to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly, and secondly, to facilitate communication with the person being interviewed. A juvenile shall not be placed in a police cell unless no other secure</p>



	<p>accommodation is available and the custody officer considers that it is not practicable to supervise him if he is not placed in a cell, or the custody officer considers that a cell provides more comfortable accommodation than other secure accommodation in the police station. He may not be placed in a cell with a detained adult.</p> <p>Where a juvenile is charged with an offence and the custody officer authorises his continued detention, he must try to make arrangements for the juvenile to be taken into the care of a local authority to be detained pending appearance in court unless he certifies that it is impracticable to do so, or, in the case of a juvenile of at least 12 years of age, no secure accommodation is available and there is a risk to the public of serious harm from that juvenile.</p> <p>The custody officer must immediately call the police surgeon if a person brought to a police station or already detained there appears to be suffering from a mental disorder.</p> <p><u>Suspects who are deaf</u></p> <p>The custody officer must call an interpreter if a suspect appears to be deaf or if there is doubt about his hearing or speaking ability or ability to understand English, and the custody officer cannot establish effective communication. Such a person must not be interviewed in the absence of the interpreter unless he agrees in writing to be interviewed without one. The police officer shall take a contemporaneous note of the interview in accordance with the requirements of Code C, as well as tape record it in accordance with the provisions of Code E.</p> <p><u>Foreign languages</u></p> <p>A person must not be interviewed in the absence of a person capable of acting as an interpreter if:</p> <ul style="list-style-type: none"> <li>(a) he has difficulty in speaking English;</li> <li>(b) the interviewing officer cannot speak the person's own language; and</li> <li>(c) the person wishes an interpreter to be present.</li> </ul> <p><u>Suspects who are blind</u></p> <p>If the suspect is blind, seriously visually handicapped or unable to read, the custody officer shall ensure that his solicitor, relative, the appropriate adult or some other person likely to take an interest in him is available to help in checking any documentation. Where Code C requires written consent or signification then the person who is assisting may be asked to sign if the detained person so wishes.</p> <p><u>Foreign nationals</u></p> <p>A citizen of an independent Commonwealth country or a national of a foreign country (including the Republic of Ireland) may communicate at any time with his High Commission, Embassy or Consulate, and have them informed of his whereabouts and grounds for detention.</p> <p>Consular officers may visit one of their nationals who is in police detention to talk to him and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.</p> <p><u>Scotland</u></p> <p>Scots criminal law currently defines vulnerable persons only as children and certain mentally disordered adults.</p> <p><u>Mentally disordered</u></p> <p>The Mental Health (Scotland) Act 1984 defines people with 'mental disorder' as having 'mental illness or mental handicap however caused or manifested'. The definition includes people who are mentally ill, people with a learning disability, those with acquired brain damage and people suffering from dementia. The rights and obligations conferred by statute</p>
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	<p>and at common law apply equally to any person who comes into contact with the police, the prosecution service, and the courts. Special care and understanding is, however, required in dealing with people who have a mental disorder.</p> <p>Usually mentally-disordered people are capable of providing reliable evidence but they may, for example, have communication problems that may result in them making misleading statements or having inappropriate reactions because of their lack of immediate understanding of events. Guidance published by the then Scottish Office in June 1998<sup>100</sup> encouraged arrangements to be put in place for a person who has expertise in dealing with mentally disordered people to be present whenever someone with a mental disorder is interviewed by the police as a victim, witness, suspect or accused precognosced as a victim or witness by the Procurator Fiscal, or required to attend court as a witness or accused person.</p> <p>The person with expertise in dealing with mentally disordered people is known as an ‘appropriate adult’. The role of an appropriate adult is to: be on hand to provide support and reassurance to the person being interviewed</p> <p>help ensure that the interviewee understands and continues to understand why he or she is being interviewed or questioned in court</p> <p>help ensure that the interviewee understands the questions being asked and the implications of his or her answers or failure to answer questions</p> <p>facilitate communication where possible between the interviewee and the person conducting the interview or asking questions in court</p> <p>in the case of a suspect or accused, ensure that the mentally disordered person is not disadvantaged by their disorder, that he or she fully understands their rights and continues to understand them throughout the interview or court appearance</p> <p>Appropriate adults should be completely independent of the police and other criminal justice agencies and, where possible, the mentally disordered person being interviewed. It is likely that they will have a background in the mental health or social work professions, in voluntary work, or as carers. Arrangements for the deployment of appropriate adults are generally made on a regional basis, and there are presently 10 appropriate adult schemes in operation throughout Scotland.</p> <p>In most cases the investigating officer will be guided over whether the person has a mental disorder by comments from carers or other individuals who know the interviewee. In some cases, however, the police may need information from elsewhere. In some areas of Scotland mentally disordered people may carry ‘medical alert’ or ‘advocacy’ cards. Other sources of information as to whether a person has a mental disorder would be the interviewee’s GP, psychiatrist or other qualified medical practitioner, the local community mental health team, statutory agencies such as social work department, a previously instructed solicitor etc.</p> <p><u>Children</u></p> <p>The Age of Legal Capacity (Scotland) Act 1991, (as amended by the Children (Scotland) Act, 1995) generally allows persons under the age of 16 years to instruct a solicitor. Legal aid is automatically available to a child prosecuted in a criminal case.</p>
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<sup>100</sup> ‘Interviewing People Who Are Mentally Disordered: “Appropriate Adult” Schemes’, The Scottish Office, June 1998.

Question 2	<p><b>2) Criminal legal aid</b></p> <p><b>(a) What is the national budget for legal aid in criminal proceedings? This should be given in absolute terms and also as a percentage of the total criminal justice budget.</b></p> <p><b>(b) Is there a scheme for emergency assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what qualifications are required of lawyers participating in this scheme?</b></p> <p><b>(c) How is the system for granting criminal legal aid for proceedings? Please give details of entitlement, eligibility, any maximum amounts and how lawyers are paid. What qualifications are required of lawyers participating in this scheme?</b></p>
Austria	<p>The usual term in the Austrian legal system is “<i>Proceedings aid</i>”; it is used in the responses to the following questions.</p> <p>(a) What is the national budget for legal aid in criminal proceedings? This should be given in absolute terms and also as a percentage of the total criminal justice budget. A total of € 13,990,000 is available for legal aid in the budget of the Justice Department in 2002. It is not known what proportion is allocated to criminal proceedings. It is usual for about 60% of total spending to be allocated to legal aid in criminal cases. Spending on criminal jurisdiction cannot currently be identified as a separate budget item.</p> <p>(b) Is there a scheme for emergency assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what qualifications are required of lawyers participating in this scheme? At present the Austrian code of criminal procedure does not provide for an “official stand-by service” for suspects who are held by the police.</p> <p>(c) How is the system for granting criminal legal aid for proceedings? Please give details of entitlement, eligibility, any maximum amounts and how lawyers are paid. What qualifications are required of lawyers participating in this scheme? For suspects/defendants – regardless of whether they are Austrian citizens or foreign nationals – Austria’s code of criminal procedure provides in essence for the <u>mandatory</u> selection or assignment of a defence counsel in the following cases (essential defence): if and for as long as the defendant is held on remand; in cases where a term of imprisonment of more than three years is pending, for the main proceedings; in cases where a penalty associated with a loss of freedom of indeterminate length is under consideration (especially in the case of offenders who are mentally abnormal); in certain appeal proceedings. If a defendant is financially unable to bear the (total) costs of his defence, the court may assign him a defence counsel on request – and in cases of mandatory defence even without a request – whose costs he will not have to bear, or will only have to bear in part, if this is necessary in the interests of the administration of justice, especially in the interests of an effective defence (legal aid/procedural aid). The assignment of a defence counsel under the legal aid scheme is in any case necessary: in cases of necessary defence (see above), in the case of a factually or legally difficult situation, in appeal proceedings, if the defendant is blind, deaf, dumb or otherwise handicapped, or does</p>

	<p>not have an adequate knowledge of the language of the court, and is therefore unable to defend himself effectively (§ 41 paragraph 2 of the Code of Criminal Procedure).</p> <p>A decision as to whether on the basis of his financial or family circumstances, or his income, a defendant can raise all or part of the <u>funds</u> for the conduct of the proceedings or for his defence without the restriction of “essential subsistence”, will usually be made on the basis of information provided by the defendant about his financial situation. The court will not usually fix the level of “essential subsistence” autonomously, but it will usually be assumed to be in excess of the minimum subsistence which is protected against attachment.</p> <p>If the conditions set out above for the assignment of a defence counsel under the legal aid scheme are present, the court will pass an appropriate resolution, which must, amongst other things, be delivered to the appropriate professional association of lawyers. In accordance with fixed, previously established rules the Committee of the Professional Association of Lawyers will reserve a specific lawyer (§§ 45ff of the Lawyers’ Code - RAO). In this way it is possible to take account of a defendant’s wishes as regards specific lawyers.</p> <p>The courts are obliged to explain to the defendant the possibility of applying for a defence counsel to be assigned under the legal aid scheme. Applications may be made verbally before the court or in writing – there is no special form.</p> <p>Defence counsels providing legal aid are remunerated by the payment of a suitable lump sum to the Conference of the Austrian Professional Association of Lawyers which goes into a pension fund for lawyers (§ 47 paragraph 1 RAO). This currently amounts to about €12,5 million a year. In the case of proceedings which last longer than average, a special lump sum is paid directly to the lawyer; in 2000 this was a sum of about €1,09 million.</p> <p>In principle every lawyer practising in Austria can be called upon to provide legal aid (in civil and criminal cases). As will be gathered from the first part of this response, an individual lawyer will be appointed for specific proceedings by the local professional association of lawyers. Lawyers acting as assigned counsels (§ 42 paragraph 2 of the Code of Criminal Procedure– see response to Question 4a) are appointed by the local professional association of lawyers. Only lawyers who have declared their readiness to do so will be called upon to act as assigned lawyers.</p> <p>Assigned lawyers (§ 42 paragraph 2 of the Code of Criminal Procedure – see response to Question 4a) officially receive a payment of €182.00 for their efforts, which also compensates their cash expenses, and the sales tax which these attract. If a different defence counsel appears for the defendant at the custody hearing, the assigned lawyer will be entitled to one half of the sum stated for his efforts. If the defendant is sentenced and ordered to pay costs, he must repay the costs of the assigned lawyer who appeared for him at the custody hearing, unless the conditions for granting legal aid (see above) exist (§ 393 paragraph 3 of the Code of Criminal Procedure).</p>
<b>Belgium</b>	<p>Rappelons, à titre liminaire, qu’en Belgique, il existe deux systèmes d’aide aux justiciables démunis : l’aide juridique et l’assistance judiciaire. L’aide juridique, visée aux articles 508/1 à 508/23 du Code judiciaire consiste à octroyer la gratuité totale ou partielle des honoraires d’avocat. L’assistance judiciaire, visée aux articles 664 à 699 du Code judiciaire, consiste à octroyer la gratuité totale ou partielle des frais de procédure.</p>

	<p>Hormis les conditions de ressources pour l'obtention du bénéfice de ces aides, les 2 systèmes ont leur régime propre.</p> <p>Les données disponibles ne permettent pas de distinguer les affaires pénales des affaires civiles.</p> <p>A titre indicatif, le budget global (matières civile et pénale confondues) alloué pour l'aide juridique s'élevait, pour l'année judiciaire 1999-2000 à 908.000.000 BEF. Pour l'année judiciaire 2000-2001, il s'élève à 25.280.000 EUR.</p> <p>Les modalités d'octroi sont prévues aux articles 508/13 à 508/18 du Code judiciaire.</p> <p>La demande est adressée au bureau d'aide juridique de l'arrondissement concerné. Celui-ci vérifie si les conditions de gratuité sont remplies. En cas d'urgence le bénéfice de cette aide peut être accordé provisoirement au demandeur par le bureau.</p> <p>Les décisions de refus peuvent faire l'objet d'un recours devant le tribunal du travail.</p> <p>Assistance judiciaire</p> <p>Les modalités d'octroi sont prévues aux articles 667 à 680 du Code judiciaire.</p> <p>La demande est portée devant le juge ou le bureau du tribunal ou de la cour qui doit être saisi du litige ou, selon le cas, du lieu où l'acte doit être accompli. En cas d'urgence, le président du tribunal ou de la cour et, durant l'instance, le juge saisi de la cause, peuvent sur requête, même verbale, accorder le bénéfice de cette aide pour les actes qu'ils déterminent.</p> <p>Les décisions peuvent faire l'objet d'un recours organisé par les articles 688 à 690 du Code judiciaire.</p> <p>N.B. L'article 691 du même Code dispose que si une des parties ne comprend pas la langue dont il est fait usage devant le bureau de première instance ou d'appel, l'intervention d'un interprète est obligatoire et les frais d'interprète sont à charge de l'Etat.</p> <p>Conditions à remplir pour bénéficier de l'aide juridique et de l'assistance judiciaire :</p> <p>Ces conditions sont reprises dans un arrêté royal du 10 juillet 2001 déterminant les conditions de la gratuité du bénéfice de l'aide juridique de première ligne et de la gratuité partielle ou totale du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire, auquel il est renvoyé (voir annexe). Les conditions relatives à la gratuité totale y sont reprises à l'article 2. Certains justiciables bénéficient automatiquement de ces aides sur simple présentation du document probant, il s'agit de ceux visés à l'article 2, § 1er, 3 à 10°. Ceux qui ne sont pas visés par ces dispositions doivent faire la preuve de leurs revenus (article 2, § 1er, 1° et 2° du même arrêté).</p> <p>Plafonds d'aide : Aucun plafond n'est prévu.</p> <p>Modalités de rémunération :</p> <p>Les modalités de rémunérations sont organisées par l'article 508/19 du Code judiciaire et l'arrêté royal du 20 décembre 1999 fixant les conditions d'octroi, le tarif et les modalités de paiement de l'indemnité allouée aux avocats en exécution des articles 508/19, 508/20, 508/22 et 508/23, du Code judiciaire ainsi que par l'arrêté ministériel du 20 décembre 1999 portant exécution de l'arrêté royal du 20 décembre 1999 précité (en annexe).</p> <p>Les avocats chargés de l'aide juridique de deuxième ligne font rapport au bureau d'aide juridique sur chaque affaire pour laquelle ils ont accompli des prestations à ce titre. Le bureau attribue des points aux avocats pour</p>
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	<p>ces prestations (sur la base de la liste figurant dans l'annexe à l'arrêté ministériel du 20 décembre 1999 précité) et en fait rapport au bâtonnier. Le bâtonnier communique le total des points de son barreau, pour les francophones, à l'Ordre des barreaux francophone et germanophone et, pour les flamands, à l'Orde van vlaamse balies. Ces autorités communiquent le total des points de tous les barreaux au ministre de la Justice et font une proposition concernant le calcul de la valeur d'un point. Après vérification, le ministre détermine le montant total des indemnités et établit la valeur d'un point. Il en informe les autorités susvisées et leur verse le montant des indemnités. Celles-ci les transmettent aux différents barreaux qui les répartissent entre les avocats. Aucune qualification particulière n'est exigée des avocats participant à ce système.</p>
<b>Cyprus</b>	<p>(a) According to the information given by the Ministry of Justice, the national budget for legal aid in criminal proceedings is C.Y.P. 119,000,000, and that consists a percentage of 2,5% of the total criminal justice budget.</p> <p>(b) Suspects who are being questioned at the police station may always ask for the assistance of a lawyer, either of their choice or otherwise. Such lawyer should be registered in the Cyprus Bar Association.</p> <p>(c) The mechanism for granting criminal legal aid is provided for in the Law of 2002 to provide for Legal Aid (L.65(I)/2002). According to article 7 of this Law, the suspect shall apply for legal aid and in his application shall include, <i>inter alia</i>, his financial condition (art. 8). If the suspect is granted legal aid, he has the right to choose his lawyer, otherwise a lawyer is designated by the Court (art 10) from a relevant catalogue of lawyers. The minimum and maximum scales of expenses are defined by a decision of the Supreme Court. Furthermore, article 64 of Cap.155 provides for the assignment of lawyer by the Court to the accused, depending on the gravity or the difficulty of the case or other circumstances.</p>
<b>Czech Republic</b>	<p>(a) The national budget (year 2003) for the remunerations of attorneys in criminal matters (that means remunerations of ex-offo attorneys): 327, 827 mil. Czech crowns. (<i>Furthermore, there is additional 150 mil. Czech crowns at disposal of both Ministry of Justice and Ministry of Interior as a reserve for the remunerations in proceedings in general.</i>)</p> <p>(b) No, there isn't any scheme for emergency assistance on a 24-hour basis for suspects. It is up to suspect to select a defence counsellor who can be present from the beginning of the criminal proceedings, even during pre-trial stage. If the suspect doesn't select any counsellor and it is a case of "compulsory defence" as described above, the agencies involved in criminal proceedings must appoint one for him.</p> <p>Concerning the qualification of lawyers participating in the scheme of legal aid in criminal proceedings, only attorneys are allowed to provide legal aid in criminal proceedings and act as defence counsellors (however, attorneys may be under certain circumstances substituted by law clerks). The qualification of future attorneys is verified in the course of the compulsory professional exam that must be passed by everybody who wants to become an attorney. There exists a Bar Association associating all attorneys (on compulsory basis) authorized to provide legal services. This body is a self-governing vocational chamber independent on the state and governed by its internal regulations.</p>

	<p>(c) The Czech Republic has already a functional national scheme for providing legal representation in criminal and civil proceedings. Furthermore, a draft Act on Legal Aid bringing more transparency into this issue is being prepared by the Ministry of Justice.</p> <p>The Czech regulation of the issue of free legal aid in criminal proceedings goes far beyond the standards provided for in respective international treaties operating with the term “when the interests of justice so require”. Under the Czech criminal law the only aspect that must be taken into consideration when deciding about the free legal representation is the social situation of the defendant; the seriousness of a crime or a risk of severe sanction is not relevant. If the defendant proves that he/she has not sufficient means to pay the cost of defence, the chairman of the panel, and the judge in the preparatory proceedings, decide that he/she has right to a free defence, or a defence for the reduced fee. In such case the cost of the defence is paid in full or in part by the state. It is obvious that the burden of proof of inability to cover the costs of criminal proceedings should in all cases lie on a suspect/defendant.</p> <p>The attorneys participating in the scheme of free legal aid in criminal proceedings are entitled to the remuneration generally determined by a state authority (by the Decree of the Ministry of Justice on the fees of attorneys) according to the predefined aspects. Therefore, the lawyers exactly know how much they will get for a particular action in criminal proceedings. Such remuneration doesn’t require any further verifying. We would like to add that the defence lawyers in the Czech Republic are particularly interested in providing of legal representation in criminal proceedings and therefore there isn’t any need to verify their remuneration.</p> <p>As regards the qualification of lawyers participating in this scheme, we refer to our answer to the previous question.</p>
<b>Denmark</b>	<p>(a) According to the proposed state finance bill for the financial year of 2003, the expenses to criminal procedure etc. are estimated to amount to 474,4 mill. DKK (≈ 63, 9 mill. Euro). It is noted in the annotations to this account number, that the estimation is based on the following expense estimates, calculated on the basis of actual expenses in the financial year of 2001:</p> <p>Fees of legal defence council approx. 270 mill. DKK (≈ 36,4 mill. Euro),  Accountants’ fee approx. 28 mill DKK (≈ 3,8 mill. Euro),  Forensic expenses approx 100 mill. DKK (≈ 13,5 mill. Euro),  Medical expenses approx. 19 mill. DKK (≈ 2,6 mill. Euro),  Medical supervision of detainees approx. 12 mill. DKK (≈ 1,6 mill. Euro) and  Other costs approx. 43 mill. DKK (≈ 5,8 mill. Euro)</p> <p>It should be noted that the expense of 270 mill. DKK for legal defence council is the initial expense. In the cases where the defendant is indicted according to the charge the state can, in principle, collect the expenses from the indicted.</p> <p>Furthermore, these expenses do not include the costs connected with the provision of free legal aid to victims, who are offered legal council, cf. AJA, section 741 a.</p> <p>(b) When a person is charged of a crime, which can result in a more severe sanction than a fine, the charged person must be informed of his right to remain silent and the right to request for a lawyer. If the interrogation of the person cannot wait until a court has assigned a lawyer, a lawyer from a predefined list of assigned lawyers (cf. AJA,</p>

	<p>section 733) is assigned. These rules are found in regulation no. 467 of 26 September 1978 concerning the guidance of charged persons' right to request legal counsel and circular letter of 16 June 2001 to the Police and the Prosecution Services concerning information to relatives or others of arrest, the right of an arrested person to contact a lawyer and to have medical assistance summoned</p> <p>The Ministry of Justice appoints a number of lawyers to appear as counsels for defendants in criminal cases at every Danish court. The decision of the Ministry of Justice to appoint a lawyer as counsel is based on several considerations. Of decisive importance are the qualifications of the candidate. Preference is given to candidates who have experience in criminal law and criminal proceedings and overall have demonstrated competence and commitment etc.</p> <p>The appointed lawyers are on rotating telephone-duty on a 24-hour basis, 7 days a week. This means that it is always possible to arrange for legal counsel.</p> <p>(c) When a defendant has been assigned a lawyer by the state, the costs will initially be covered by the state, but in case the person is found guilty the state can claim reimbursement of the costs from the convicted person. Costs related to lawyers others than the one assigned by the state are generally the charged person's own liability. This is also the case if expenses have exceeded what is deemed necessary for the case, cf. AJA, section 1007.</p>
<b>Estonia</b>	<p>(a) The national budget for legal aid in criminal proceedings was 97% of the national budget for state legal aid – 23,280,000 Estonian kroons in 2002.</p> <p>Unfortunately it is not possible to determine the total criminal justice budget as the budgets for the police, the prosecutor's offices and the courts are separate and never viewed together. There are no courts in Estonia dealing solely with criminal cases, therefore we only have data about the budget of courts of general jurisdiction.</p> <p>(b) According to article 351 of the Code of Criminal Procedure a suspect has the right to have a criminal defence counsel. Criminal defence counsel has the right to participate in criminal proceedings after the detention of a person as a suspect or, if the person has not been detained as a suspect, after he has been notified of the fact that he is a suspect, and if the person has not been interrogated as a suspect, after formal charges against the person. After a criminal defence counsel has been appointed, the counsel has the right to meet with the person being defended without the presence of other persons, for an unlimited number of times with unlimited duration.</p> <p>Only sworn advocates, senior clerks and clerks of sworn advocates belonging to the Estonian Bar Association may act as criminal defence counsels in criminal proceedings. Other persons may act as counsels with the permission of the preliminary investigator or the court. In practice: if a suspect has requested the participation of a criminal defence counsel or if the participation of the defence counsel is mandatory according to law, the preliminary investigator will always appoint the member of the Estonian Bar Association to act as the criminal defence counsel.</p> <p>According to article 23 of the Bar Association Act a person may be admitted to the Estonian Bar Association, if he or she has active legal capacity, resides in Estonia or is a citizen of the Republic of Estonia or of a Member State of the European Union, has fulfilled the requirements of an accredited law curriculum of academic studies, has oral and written</p>



	<p>proficiency in Estonian and is honest and of high moral character and has passed the bar examinations (the examination of a sworn advocate's clerk; the examination of a sworn advocate's senior clerk or a sworn advocate's examination)</p> <p>(c) The preliminary investigator or the court, or during negotiations for simplified proceedings, the prosecutor, shall appoint criminal defence counsel to a suspect, accused or accused at trial if the participation of criminal defence counsel in the proceedings is mandatory or if the suspect, accused or accused at trial has requested the participation of a criminal defence counsel but does not have criminal defence counsel. In such cases, the Estonian Bar Association shall ensure the participation of criminal defence counsel at the expense of the state.</p> <p>Pursuant to article 36 of the Code of Criminal Proceedings the sworn advocates of the Republic of Estonia, senior clerks and clerks of sworn advocates and other persons with the permission of the preliminary investigator or the court may act as criminal defence counsels in criminal proceedings. Only sworn advocates may act as criminal defence counsels in the Supreme Court. Only the members of the Estonian Bar Association may be appointed as the defence counsels at the expense of the state.</p> <p>The participation of a criminal defence counsel in criminal proceedings is mandatory in criminal matters of minors until the minors attain the age of majority; in criminal matters of persons who due to physical or mental disabilities are not capable of exercising their right of defence by themselves; in criminal matters of persons who are accused of the commission of a criminal offence for which life imprisonment may be imposed as punishment; in the hearing of criminal matters in the Supreme Court. The participation of a criminal defence counsel in simplified proceedings is mandatory from the beginning of the negotiations.</p> <p>If the suspect or the accused himself chooses his defence counsel, then the fees are paid to the lawyer according to the respective contract between them. Upon acquittal of an accused at trial, the legal costs shall be borne by the state, but only up to a reasonable extent. Upon the acquittal of an accused at trial in a matter where criminal proceedings may be commenced only on the basis of a complaint by the victim, the court has the right to order that the legal costs be fully or partially paid by the complainant</p> <p>With regard to state legal aid, the Estonian Bar Association has adopted a decision (with the approval of the Minister of Justice) determining the bases for the calculation of fees payable for provision of state legal aid, the procedure for the payment and the amount of advocate's fees. The fee is currently 130 Estonian kroons per hour and in some difficult cases, mentioned in the decision of the Bar Association, 265 Estonian kroons per hour.</p> <p>The management board of Estonian Bar Association organises the provision of state legal aid by advocates and the remuneration for provision of state legal aid.</p> <p>If criminal defence counsel participated in a criminal matter as appointed counsel, the court shall make a ruling on the amount payable simultaneously with the referral of the criminal matter for further pre-trial investigation or with the making of a court judgment. The judgement or the ruling shall be sent to the advocate and to the Estonian Bar Association.</p>
<b>Finland</b>	<p>(a) Previously the legal aid system in Finland has been two-fold: the public legal aid offices and private attorneys being paid by the state for</p>

	<p>their assistance. The legal aid system has changed as of 1.6.2002 combining these two and bringing 2/3 of the population (previously 40%) under the coverage of free legal aid. This may increase the costs. The legal aid statistics don't separate legal aid in criminal and civil cases. Approximately over 70% of the legal aid is given in criminal cases. Total budget for criminal justice system can not be defined as such. The total budget for administration under Ministry of Justice (ministry, court system, legal aid, prosecution, execution, enforcement of sentences and elections) in 2001 was 3.441 million marks (578.7 million €), of which the majority goes to court related issues. The total budget in 2001 for public legal aid 289,9 million marks (48,8 million €).</p> <p>In 1999 public legal aid offices cost the state 97,3 million marks. Brutto costs were in 1999 c. 113,4 million marks. In 1999 public legal aid offices handled in total 52 000 cases and one individual case cost c. 1.871 marks.</p> <p>Free legal aid includes also private attorneys assisting citizens and costs amounted due private persons loan arrangement system.</p> <p>Legal fees of persons acquitted (covered by the state) in 1999 (since 1999) were 2,36 million marks and in 2000 5,0 million marks.</p> <p>(b) (b) No, legal aid offices principally operate 8.00-16.15 on weekdays. Mostly in criminal cases suspects refer to private attorneys etc.</p> <p>(c) (c) See attached leaflet (new legislation as of 1.6.2002). Lawyers are being paid according to the Degree on free legal aid costs.</p> <p>Degree states that the lawyers are paid in criminal law cases 252 € (max 3 hours) for preparatory work; 118 € (max 2 hours) for assistance in pre-trial investigations and 303 € (max 3 hours) for procedures in court. If more work is required in an individual case, the fee is 84 €/hour and the requirement has to be justified. For travel and waiting time 67 %/hour is paid and travelling costs as deemed justified (bill presented etc.) The lawyer presents his bill in the court and court rules on it, according to the degree and the work deemed necessary for that individual case.</p> <p>Qualification for a lawyer is that he at least has completed upper law degree (Master of Laws) at the university.</p>
<b>France</b>	<p><i>a. Sur le budget national alloué au titre de l'aide judiciaire en matière pénale</i></p> <p>Pour l'année 2002, le budget alloué à l'aide juridique en matière pénale représente 80,639 millions d'euros. Ce chiffre représente 1,65 % du budget total du ministère de la justice. Un projet de loi relatif à l'accès au droit et à la justice, déposé au parlement, prévoit une réforme importante du système qui nécessitera une augmentation significative de ce budget.</p> <p><i>b. Sur l'existence d'un système d'assistance 24 heures sur 24 pour les suspects retenus dans les locaux de police</i></p> <p>Les barreaux -appellation désignant la structure regroupant les avocats au sein d'un ressort de tribunal de grande instance- ont organisé un service de permanence qui permet dans le cas où un suspect faisant l'objet d'une mesure de garde à vue souhaite s'entretenir avec un avocat -ou dans les cas où l'entretien avec un avocat est obligatoire- sans en avoir choisi un, de pouvoir joindre 24 heures sur 24 un avocat de permanence qui se déplacera pour s'entretenir avec le suspect.</p> <p>S'agissant des qualifications requises, elles ne sont pas différentes de celles exigées pour exercer de manière générale la profession d'avocat. Les avocats qui participent à ce dispositif sont ceux qui sont inscrits au barreau d'un ressort de tribunal de grande instance.</p> <p><i>c. Sur le système d'octroi de l'aide judiciaire en matière pénale</i></p> <p>Le dispositif d'aide juridique est prévue par la loi n° 91-647 du 10 juillet</p>

	<p>1991 relative à l'aide juridique complétée par le décret n°91-1266 du 18 décembre 1998. Il recouvre, pour ce qui concerne la matière pénale, l'aide juridictionnelle (termes retenus par la loi pour les aides accordées pour une procédure devant une juridiction), l'aide à l'intervention de l'avocat dans des procédures pénales alternatives aux poursuites et pour l'intervention de l'avocat au cours des mesures de garde à vue.</p> <p>- Les conditions d'octroi de l'aide juridictionnelle.</p> <p>L'aide juridictionnelle est accordée aux personnes, suspect ou victime, dont les ressources mensuelles sont inférieures à un plafond fixé qui est revalorisé chaque année. Ce plafond est actuellement fixé à 802 €. Il est majoré de 91 € par personne à charge. Toutes les ressources de la personne sont prises en compte, à l'exception de certaines aides sociales limitativement énumérées.</p> <p>Lorsque la personne perçoit des ressources comprises entre 803 € et 1203 €, plafonds auxquels s'appliquent également les correctifs pour charge de famille, elle bénéficie de l'aide juridictionnelle partielle. Dans ce cas, la contribution de l'Etat à la rétribution de l'avocat représente alors un pourcentage de la contribution versée en cas d'aide juridictionnelle totale dans une proportion inverse aux ressources.</p> <p>(voir tableau à l'annexe 4 donnant les chiffres actuels)</p> <p>En cas d'aide juridictionnelle partielle, l'avocat a le droit de la part du bénéficiaire à un complément d'honoraire librement négocié et dont le montant est mentionné dans une convention écrite préalable.</p> <p>- Procédure d'admission à l'aide juridictionnelle</p> <p>L'admission à l'aide juridictionnelle est décidée par le bureau d'aide juridictionnelle établi auprès de chaque juridiction qui est présidé par un magistrat de la juridiction et composée d'un avocat, d'un huissier de justice, d'un représentant des usagers et de représentants des administrations de l'Etat. Le bureau statue au vu d'une demande déposée par l'intéressé qui comporte les pièces justificatives de ses ressources. La décision est susceptible de recours devant le président du tribunal.</p> <p>Le bénéficiaire de l'aide juridictionnelle peut choisir librement son avocat, sous réserve que celui-ci accepte. Il peut également demander que le bâtonnier lui désigne un avocat. Aucune qualification particulière n'est requise de l'avocat choisi ou désigné.</p> <p>En cas d'urgence, le président du bureau d'aide juridictionnelle ou la juridiction saisie, peut prononcer l'admission provisoire à l'aide juridictionnelle sur simple demande. L'examen des ressources du demandeur est effectué a posteriori par le bureau d'aide juridictionnelle qui peut prendre une décision de retrait de l'admission à l'aide juridictionnelle si ces ressources sont supérieures au plafond.</p> <p>Enfin, lorsque qu'un avocat est désigné d'office au cours de la procédure, soit à la demande de l'intéressé, soit à la demande d'un magistrat lorsque la présence d'un avocat est obligatoire (cas des procédures concernant des mineurs), la demande d'admission à l'aide juridictionnelle est faite par l'avocat commis d'office pour le compte de son client après l'instance concernée. Si l'aide n'est pas accordée, l'avocat réclame, en théorie, des honoraires à son client. En pratique les statistiques montrent qu'en cas de commission d'office, l'admission à l'aide juridictionnelle est accordée largement par les bureaux d'aide juridictionnelle.</p> <p>- Modalité de rémunération de l'avocat.</p> <p>La contribution de l'Etat est fixée forfaitairement par type de procédure dans un tarif établie par décret (article 90 du décret n°91-1266 du 19 décembre 1991). Une nomenclature des procédures prévoit pour chacune d'entre elles un nombre d'unités de valeur. Le montant de l'unité de</p>
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	<p>valeur est fixé chaque année par la loi de finances.</p> <p>A titre d'exemple, ce calcul donne actuellement les résultats suivants : la contribution de l'Etat pour assister un prévenu pour une audience correctionnelle est de 163,44 €, pour assister un accusé devant une cour d'assises, elle est de 817,2 €. Le nombre d'unités de valeur peut être majoré en fonction de différents critères (durée des audiences, présence de partie civile).</p> <p>- L'aide à l'intervention de l'avocat en garde à vue et dans les procédures alternatives aux poursuites</p> <p>Le montant forfaitaire de l'aide à l'intervention de l'avocat pour l'intervention en garde à vue et dans les procédures alternatives aux poursuites devant une juridiction est forfaitaire et fixé par décret (article 132-2 du décret n°91-1266 du 19 décembre 1991). Pour les procédures alternatives aux poursuites, l'aide est accordée sous condition de ressources inférieures au plafond prévu pour l'aide juridictionnelle partielle soit actuellement 1203 €. L'admission à cette aide est prononcée par le président du bureau d'aide juridictionnelle selon une procédure simplifiée.</p> <p>- Projet de loi réformant le dispositif.</p> <p>Un projet de loi relatif à l'accès au droit et à la justice a été présenté en Conseil des Ministres et a été déposé le 20 février 2002 sur le bureau du Sénat. Il prévoit notamment, outre un allègement très important de la procédure d'admission, le relèvement des plafonds permettant de bénéficier de l'aide juridictionnelle totale. Le relèvement des plafonds de ressource permettrait, toutes matières confondues, de faire passer le taux de population exigible à l'aide juridictionnelle par rapport à la population globale du taux actuel de 26 % au taux de 46 %. Enfin, le projet prévoit un nouveau régime de rétribution de l'avocat en prenant en compte un montant horaire au titre de la prestation intellectuelle, un nombre d'heure estimé pour chaque type de procédure fixé par décret et un forfait représentant les frais professionnels.</p>
<b>Germany</b>	<p>(a) No meaningful absolute figures are available specifically for the area of criminal proceedings; neither can the proportion of the total criminal justice budget be specified.</p> <p>In some of the Bundesländer it is impossible to establish the total level of expenditure on legal aid in criminal proceedings as there is no separate budgetary item for this. This means that it is also impossible to answer the question concerning the scope of legal aid in criminal proceedings. The statistics only record whether or not legal aid was granted.</p> <p>(b) Pursuant to Section § 136 paragraph 1 sentence 2 StPO, the defendant shall, at the start of the first examination, i.e. after he has been told the offence with which he is charged and the possible penal provisions, be advised that the law entitles him to make a statement on the charge or to say nothing <u>and</u>, at any time, even before his examination, to consult defence counsel of his choice.</p> <p>Given this legal situation, the legal profession has already established "emergency lawyers" or "24-hour legal services" in many towns and other regions, which should allow consultation with a lawyer at any time (i.e. including on weekends, public holidays and during the night). In principle, lawyers working as defence counsels do not need to fulfil any particular requirements or hold any specialist qualifications.</p> <p>(c) Subject to specific requirements detailed in Section 140 StPO, official defence counsel shall be appointed for the defendant. The appointment of official defence counsel is made irrespective of whether or not the defendant is able to pay for defence counsel given his personal and</p>

	<p>financial circumstances. In detail, the following shall apply:  The assistance of defence counsel is mandatory, pursuant to Section 140 paragraph 1 StPO, if</p> <ol style="list-style-type: none"> <li>1. the main hearing is held at first instance at the Higher Regional Court [Oberlandesgericht] or the Regional Court [Landgericht];</li> <li>2. the accused is charged with a serious criminal offence (pursuant to Section 12 paragraph 1 StGB, serious criminal offences are unlawful acts which are subject to a minimum prison sentence of one year or more);</li> <li>3. the proceedings may result in a prohibition of pursuit of an occupation;</li> <li>4. (repealed);</li> <li>5. the accused has been in an institution for at least three months based on judicial order or with the approval of the judge and will not be released from such institution at least two weeks prior to the commencement of the main hearing;</li> <li>6. committal of the accused pursuant to Section 81 StPO is being considered for the purpose of preparing an opinion on his mental condition;</li> <li>7. proceedings for preventive detention are being conducted;</li> <li>8. the former defence counsel is excluded from participation in the proceedings by a decision.</li> </ol> <p>Reference should also be made to Section 140 paragraph 1 No 5 StPO, in accordance with which a defendant in remand detention who does not yet have defence counsel shall be assigned defence counsel for the duration of the remand detention, if its execution has lasted for at least three months and the public prosecution office or the accused or his statutory representative has requested an official defence counsel (Section 117 paragraph 4 StPO). The same applies in cases of provisional committal to a psychiatric hospital or to an institution for withdrawal treatment pursuant to Section 126a StPO (Section 126a paragraph 2 sentence 1 StPO).</p> <p>Pursuant to Section 140 paragraph 2 StPO, in other cases the presiding judge shall appoint defence counsel upon application or <i>ex officio</i> if the assistance of defence counsel appears necessary because of the seriousness of the offence, or because of the difficult factual or legal situation, or if it is evident that the accused cannot defend himself, particularly where a lawyer has been assigned to the aggrieved party. Applications filed by accused persons who are deaf or mute shall always be granted.</p> <p>In the case of accelerated proceedings before the Local Court, defence counsel shall be appointed for an accused person who does not yet have defence counsel where imprisonment of at least six months is to be anticipated (Section 418 paragraph 4 StPO).</p> <p>Whether or not the defendant must repay the costs associated with appointment of official defence counsel at a later stage depends on the costs order issued at the end of the proceedings. In the event of (partial) acquittal, the (corresponding) expenditure is charged to public funds. Technically, the costs also rest with public funds if repayment by the person convicted cannot be enforced.</p> <p>Prior to appointment of official defence counsel, the accused is to be given the opportunity of naming a lawyer within a period to be determined; said lawyer shall be appointed as defence counsel unless there are significant grounds for not doing so (Section 142 paragraph 1 sentence 2 and 3 StPO).</p> <p>Compulsory representation by defence counsel or court assigned defence may be regarded as a form of legal aid in criminal proceedings as it is</p>
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	<p>also granted if it is likely that it will not be possible to enforce repayment of the associated costs in connection with conviction of the accused by means of a costs order against the convicted person.</p> <p>In the case of proceedings involving juveniles, the presiding judge may also appoint legal advisor for the defendant at any stage in the proceedings if compulsory representation by defence counsel does not apply (Section 69 paragraph 1 JGG).</p> <p>For the rest, legal aid may be granted to the following parties to the proceedings:</p> <p>Pursuant to Section 379 paragraph 3 StPO, legal aid for both the private prosecutor and the defendant bringing the cross action is possible in accordance with the same provisions as in civil litigation.</p> <p>Pursuant to Section 397a StPO, the following applies to the private accessory prosecutor:</p> <p>A lawyer shall be appointed on application as legal advisor to the private accessory prosecutor if the entitlement to join a public prosecution as private accessory prosecutor is based on Section 395 paragraph 1 No 1 letter a StPO (Right to join as a private accessory prosecutor regarding specific sexual offences) or on Section 395 paragraph 1 No 2 (Right to join as a private accessory prosecutor regarding attempted murder or manslaughter) and the offence giving the right to join is a serious criminal offence (pursuant to Section 12 paragraph 1 StGB, serious criminal offences are unlawful acts subject to a minimum prison sentence of one year or more). If the private accessory prosecutor is under sixteen at the time of application, he shall also have a lawyer appointed as legal advisor if, pursuant to the aforementioned provisions (Section 395 paragraph 1 No 1 letter a, No 2 StPO), the offence is a less serious criminal offence (pursuant to Section 12 paragraph 2 StGB, less serious criminal offences are unlawful acts subject to a minimum prison sentence of less than one year or a fine) or if the private accessory prosecutor has been injured as a result of an unlawful act pursuant to Section 225 StGB (maltreatment of wards). The application for appointment of legal advisor may be made before the declaration of joining as private accessory prosecutor. Prior to appointment of legal advisor, the private accessory prosecutor should be given the opportunity, within a period to be determined, of naming a lawyer of his choice; said lawyer shall be appointed as legal advisor unless there are significant grounds for not doing so.</p> <p>If the conditions for the appointment of legal advisor pursuant to these regulations are not in place, the private accessory prosecutor shall, on application, be granted legal aid for engaging the services of a lawyer subject to the same provisions as in civil litigation if the factual or legal situation is difficult, the aggrieved party cannot adequately represent his interests himself or is not expected to do so. The application for legal aid may be made before declaration of joining as private accessory prosecutor. Prior to assignment of a lawyer as counsel, the private accessory prosecutor should be given the opportunity, within a period to be determined, of naming a lawyer of his choice; said lawyer shall be appointed unless there are significant grounds for not doing so. The authorisation procedure does not examine whether the intended prosecution has an adequate prospect of success and does not appear to be malicious.</p> <p>Decisions on the appointment of the lawyer and the granting of legal aid are taken by the court dealing with the case; its decision with respect to the granting of legal aid shall not be contestable.</p> <p>Pursuant to Section 403 paragraph 1 StPO, an aggrieved party or his heir</p>
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	<p>may, in criminal proceedings, bring a property claim against the accused arising out of the criminal offence if the claim falls under the jurisdiction of the ordinary courts and is not yet pending before another court, in proceedings before the local court, irrespective of the value of the matter in dispute.</p> <p>Pursuant to Section 404 paragraph 5 StPO, the applicant and the accused shall, upon application, be granted legal aid for this “adhesive procedure” under the same provisions as in civil litigation, as soon as the public charges have been preferred. An accused person who already has defence counsel shall have the same assigned to him under the legal aid arrangements; an applicant availing himself of the services of a lawyer as legal advisor in the main proceedings shall have the same assigned to him under the legal aid arrangements. The court dealing with the case shall be competent to decide; the decision shall not be contestable.</p> <p>Pursuant to Section 172 paragraph 3 sentence 2 clause 2 StPO, legal aid may also be granted for the proceedings to compel public charges in accordance with the same provisions as in civil litigation.</p> <p>The proceedings to compel public charges give an aggrieved person the opportunity to lodge an appeal with the senior officer of the public prosecution office against a decision of the public prosecution office by virtue of which an application for public charges to be preferred is turned down or proceedings are abandoned after the completion of investigations. Following a negative decision by the senior officer of the public prosecution office, the applicant may apply to the Higher Regional Court for a judicial ruling by submitting a letter of application signed by a lawyer.</p> <p>Pursuant to Section 68b StPO, a lawyer may also be assigned to witnesses. In this case the following shall apply:</p> <p>Witnesses without legal advisor <u>may</u>, with the consent of the public prosecution office, be assigned a lawyer for the duration of the examination if it is evident that they are unable to exercise their rights themselves during the examination and if any of their interests that are worthy of protection cannot be taken into account in another way. Where the examination concerns a serious criminal offence, a sexual offence pursuant to a specific catalogue of sexual offences, maltreatment of wards or another criminal offence of substantial significance committed on a commercial or habitual basis, by a member of a gang or in some other way committed in an organised fashion, assignment of counsel <u>shall</u> be ordered upon application by the witness or the public prosecution office if it is evident that the witness is unable to exercise his rights himself during the examination and if any of his interests that are worthy of protection cannot be taken into account in another way. The witness should also be given the opportunity of naming a lawyer within a period to be determined. The presiding judge shall appoint the lawyer named by the witness unless there are significant grounds for not doing so.</p> <p>Pursuant to Section 434 paragraph 2 StPO, the court may assign a lawyer or any other person who may be appointed as defence counsel to a person with an interest in the confiscation if the factual or legal situation is complex or if he is unable to exercise his rights himself.</p> <p>Pursuant to Section 442 paragraph 1 StPO, this provision also applies in cases of forfeiture, destruction, rendering unusable and eliminating a situation that is illegal.</p> <p>In this respect, the assignment of a lawyer serves to safeguard the interests of those persons whose rights may be affected by a decision ordering one of the aforementioned legal consequences. Forfeiture relates</p>
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	<p>primarily to the recouping of pecuniary benefits obtained as a result of or for criminal acts, while confiscation primarily relates to objects used in preparing or committing a criminal act, or representing the product thereof.</p> <p>Pursuant to Section 364b, appointment of defence counsel is also possible when the proceedings are to be reopened; for more specific details, see the response to Question 12) letter (c).</p> <p>The conditions applicable to the granting of legal aid and the arrangements for remuneration of lawyers are based on the provisions of the Code of Civil Procedure [Zivilprozessordnung, ZPO] and the Act on Lawyers' Fees [Bundesrechtsanwaltsgebührenordnung, BRAGO]; there are no absolute maximum amounts applicable to the payment of legal aid. Pursuant to Section 114 ZPO, a party receives legal aid on application if his personal and financial circumstances mean that he is unable to pay the costs of the case or can only pay part of the costs or pay in instalments. Where the arrangements for remuneration of lawyers are concerned, only an outline can be provided as an explanation of all the relevant provisions would go beyond the scope of the present exercise.</p> <p>Claims by court appointed and assigned lawyers are based on Sections 97 et seq. BRAGO.</p> <p>Section 97 BRAGO stipulates that, instead of the statutory fees, a court appointed lawyer shall, in principle, receive from public funds an amount equal to four times the minimum amount laid down in the individual provisions but not more than half of the maximum amount. The lawyer shall also be reimbursed from public funds for expenses.</p> <p>Pursuant to Section 99 BRAGO, in particularly extensive or complex criminal cases, a court appointed lawyer shall, on application, be awarded a fixed allowance for the entire duration of the proceedings or parts thereof which is higher than the fees laid down in Section 97 BRAGO. A decision on such application is made by the Higher Regional Court within the jurisdiction of the court where the criminal case is being or was heard in the first instance is situated. The Federal Supreme Court of Justice [Bundesgerichtshof] is called on to make the decision where it has appointed the lawyer.</p> <p>Pursuant to Section 98 paragraph 1 sentence 1 BRAGO, the remuneration to be paid from public funds shall, at the request of the lawyer, be set by the clerk of the court in the court of first instance.</p> <p>Pursuant to Section 102 BRAGO, these provisions apply by analogy to the fees of the lawyer who has been assigned to the private prosecutor, private accessory prosecutor or the applicant in proceedings to force public charges, or otherwise.</p> <p>The provisions also apply largely by analogy to the fees of the lawyer appointed as legal advisor to the private accessory prosecutor or an aggrieved party entitled to stand as private accessory prosecutor.</p> <p>Where calculation of the lawyer's fees is to be adjusted to take account of the level of the amount involved, the following shall apply:</p> <p>Pursuant to Section 123 BRAGO, in the case of amounts exceeding EUR 3 000, deductions are made from the fees in relation to other fees earned; these deductions from fees are taken into account when calculating the lawyer's remuneration, e.g. in connection with claims for damages in "adhesive proceedings" (proceedings concerning compensation for aggrieved parties). The deductions may be balanced out if the party to the process who has received support repays the costs to public funds (Section 124 BRAGO). Pursuant to Section 127 BRAGO, the lawyer may claim an appropriate advance from the Federal Cash</p>
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	<p>Office or Land Cash Office for fees already incurred and expenditure already incurred or foreseen.</p> <p>Court appointed or assigned lawyers or lawyers otherwise active within the legal aid framework do not need to fulfil any special conditions or hold any special qualifications.</p>
<b>Greece</b>	<p>There is no known budget of the Hellenic Republic for legal aid in criminal proceedings. No data as to the sums -if any- that the Greek administration disposes for such aid was made available.</p> <p>No scheme for emergency assistance on a 24-hour basis for suspects being held for questioning at police stations is known to exist.</p> <p>Article 96A of the CCrP, recently inserted, provides for a generally applicable system of criminal legal aid: when the court, the judicial council or the investigative authorities order the appointment of counsel for the suspect or the accused person, then he is so designated from a list submitted by the Bar Association. In addition, the law clearly states that the investigative authority has the duty to appoint a lawyer when the accused so requires<sup>101</sup>. The abovementioned list is comprised of the lawyers who so desire and is renewed every three years. The appointment of a lawyer is mandatory for the suspect or accused person. The lawyer is paid the minimum fee as set forth in Code of Lawyers, and the mode of payment is designated by a joint decision of the ministries of justice and finance; research proves that no such decision has been issued to date.</p>
<b>Hungary</b>	<p>(a) For the year 2003, approximately 1 500 000 000 HUF (more than 6 000 000 Euro per year) is foreseen for legal counsels appointed ex officio. This sum is included in the budget of the prosecutor's office, courts and the Ministry of Home Affairs. Because criminal justice expenses are divided among the authorities involved, no overall figure is available about the total criminal justice budget.</p> <p>(b) There isn't any emergency assistance service available as such. However, if the suspect does not have a counsel of his/her own choice, and legal assistance is compulsory, the suspect cannot be questioned before a legal counsel is appointed.</p> <p>(c) In certain cases (see question 1. (c) above) legal assistance is compulsory, ie. the authorities have to appoint a legal counsel if the suspect doesn't have his/her own counsel. This is also the case when the suspect is held in custody. Furthermore, a counsel is appointed (on state funds) if the suspect unable to finance the costs of legal defence so requested. Legal counsels appointed ex officio are members of the Bar, have a law degree, and, except for a very few cases, have completed at least three years of legal practice and consequently took a state exam. The conditions are the same as for legal counsels appointed by the suspect. The travel and other reasonable costs of the counsel appointed ex officio are refunded. Also, a sum of 2000 HUF per hour is issued to him/her whenever he or she has to be present during the procedure.</p>
<b>Ireland</b>	<p>(a) The national budget for criminal legal aid in 2002 is €29.978m. This figure as a percentage of the criminal justice budget is not readily available.</p> <p>(b) The Garda Station Legal Advice Scheme operates on a 24-hour basis. The Scheme provides that where a person is detained in a Garda station for the purpose of the investigation of an offence under the provisions of specified legislation and s/he has a legal entitlement to consult with a solicitor and the person's means are insufficient to enable him/her to pay</p>

<sup>101</sup> Article 100 para. 3 CCrP.

	<p>for such consultation, that consultations with solicitors will be paid for by the State. Any qualified solicitor is eligible to participate in the Scheme.</p> <p>(c) Under the Criminal Justice (Legal Aid) Act, 1962 and the Regulations made under it, free legal aid may be granted, in certain circumstances, for the defence of persons of insufficient means in criminal proceedings. The grant of legal aid entitles the applicant to the services of a solicitor and, in certain circumstances, counsel, in the preparation and conduct of his defence or appeal.</p> <p>Under the Act, the Courts are responsible for the granting of legal aid. An application for legal aid is made to the court, either, in person, by the applicant's legal representative or by letter. An applicant for legal aid must establish to the satisfaction of the court that his/her means are insufficient to enable him/her to pay for legal aid him/herself. This is purely a discretionary matter for each court and is not governed by any financial eligibility guidelines. However, an applicant may be required by the court to complete a statement of means.</p> <p>The Criminal Legal Aid Scheme is provided entirely by solicitors and barristers in the private legal profession. Two separate payment systems are in place in relation to the payment of practitioners under the Criminal Legal Aid Scheme.</p> <p><u>District Court and appeals to the Circuit Court.</u></p> <p>Solicitors are paid an initial brief fee for the first appearance in court and a refresher fee for each subsequent day in court.</p> <p><u>Circuit Court and higher Courts.</u></p> <p>The fees payable to counsel in the Circuit and higher Courts in respect of indictable offences are determined entirely by the fees which the Director of Public Prosecutions (DPP) pays to the prosecution counsel, through parity agreements. The fees payable to solicitors in respect of their services in the Circuit and higher courts are related to the fees payable to the defence counsel which are in turn based on the fees payable to the prosecution counsel as determined by the DPP.</p>
<b>Italy</b>	<p>(a) Under the Italian system, State-funded legal aid is available for less well-to-do citizens with an annual income of less than ITL 18 million (see Law 217 of 30 July 1990, as last amended by Law 134 of 29 March 2001). The national budget for legal aid in criminal proceedings is ITL 74 100 000 000 for 2002. This sum comes under the expenditure heading for legal costs for which the total appropriation is ITL 134 000 000 000.</p> <p>(b) Under the Italian system, any person involved in criminal proceedings who has not nominated or who has been left without an officially assigned defence counsel is automatically entitled to be defended (see Article 97 CCP). Each Bar Council (the representative body of the bar of lawyers), via an appropriate office, draws up lists of lawyers who, at the request of the judicial authority or the criminal police, are available for appointment. In cases, therefore, where the courts, public prosecutors or criminal police have to take a measure at which a defence counsel must be present – for instance questioning – and the suspect or defendant has no such counsel, they must inform the defence counsel whose name has been forwarded by the above-mentioned office of this measure. If the defence counsel assigned in this way has not been located, has failed to appear or has relinquished the defence, the court appoints another defence counsel who is immediately available as a replacement; in the same circumstances, public prosecutors and the criminal police request another name from the above-mentioned office. Officially assigned defence counsel must provide assistance and may be replaced only on justified grounds; their tasks cease if suspects or defendants appoint a defence</p>

	<p>counsel of their own choice.</p> <p>Appointment criteria are laid down by the Bar Councils and include specific competences, proximity to the place of proceedings and availability. For inclusion in the lists of counsel who may be officially assigned, it is necessary to have practised as a criminal lawyer for at least two years or, otherwise, to attend refresher training courses organised by the Bar Council.</p> <p>(c) Officially assigned defence counsel are normally paid by the persons receiving their legal assistance. State-funded legal aid is reserved (see Article 3 of Law 217 of 30 July 1990) for those who are less well-to-do, with an annual income of less than ITL 18 million, assessed from income subject to personal income tax (for those forming part of a family unit, the total income of individual family members is assessed, but the limit is raised by ITL 2 million per member). Defence counsel can be freely chosen, even by those making use of State legal aid.</p>
<b>Latvia</b>	--
<b>Lithuania</b>	<p>a) In 2005 a total of LTL 7 150 000 is allocated in the state budget to secondary legal aid. There is no separate amount for secondary criminal legal aid.</p> <p>b) Article 10 of the Code of Criminal Procedure states that a suspect, accused or convicted persons is entitled to a defence. This right is guaranteed from the time of the arrest or initial enquiry. The court, public prosecutor and officer responsible for the pre-trial investigation are required to check the possibility of using the provisions, measures and means laid down by law to defend a suspect, accused or convicted person against the suspicion or accusation in question and to take the necessary measures to ensure that their human and property rights are protected. Under Article 21 of the Law on state-guaranteed legal aid, where the physical presence of a defence lawyer in court is required by Article 51 of the Code of Criminal Procedure and in other cases where a suspect, accused or convicted person requests a defence lawyer, the pre-trial investigation officer, prosecutor or court must notify to the co-ordinator that the suspect, accused or convicted person requires a defence lawyer. Upon the receipt of such notification, the coordinator must immediately select a lawyer to provide secondary legal aid and notify the pre-trial investigation officer, prosecutor or court and the state-guaranteed legal aid service thereof.</p> <p>Coordinators – lawyers appointed by the Lithuanian Public Prosecutor’s Office, help to organise the provision of secondary legal aid in criminal cases. The Lithuanian Bar Association informs the courts, public prosecutor’s office and body carrying out the pre-trial investigation of who has been appointed coordinator.</p> <p>Secondary legal assistance is provided by lawyers selected by the state-guaranteed legal aid service. According to the relevant rules, lawyers entered on the list of lawyers practising in Lithuania, who are entitled to pursue activities as a lawyer and who have done so for at least one year are entitled to take part in the competition.</p> <p>c) Under Article 21 of the Law on state-guaranteed legal aid, where the physical presence of a defence lawyer in court is required by Article 51 of the Code of Criminal Procedure and in other cases when a suspect, accused or convicted person requests a defence lawyer, the pre-trial investigation officer, prosecutor or court must notify to the co-ordinator (a lawyer appointed by the Lithuanian Public Prosecutor’s Office) that the suspect, accused or convicted person requires a defence lawyer. Upon the receipt of such notification, the coordinator must immediately select a</p>

	<p>lawyer to provide secondary legal aid and notify the pre-trial investigation officer, prosecutor or court and the state-guaranteed legal aid service thereof.</p> <p>Under Article 51 of the Code of Criminal Procedure, the physical presence of a defence lawyer in court is required in the following cases:</p> <ol style="list-style-type: none"> <li>1) cases relating to activities of which a minor is a suspect or the accused;</li> <li>2) cases in which a blind, deaf, or dumb person or a person with another physical or mental handicap is unable to make use of his right to a defence;</li> <li>3) cases involving persons who do not have a knowledge of the procedural language;</li> <li>4) cases in which there are conflicts of interest relating to the defence of suspects or accused where at least one of them has a defence lawyer;</li> <li>5) cases regarding crimes for which the penalty of life imprisonment may be imposed;</li> <li>6) in accordance with the procedure laid down by the Code of Criminal Procedure, cases in which the accused is not present;</li> <li>7) cases in which the suspect or accused has been arrested;</li> <li>8) cases concerning possible extradition or surrender of a person to the International Criminal Court or under a European arrest warrant;</li> <li>9) cases tried in accordance with the accelerated procedure.</li> </ol> <p>The pre-trial investigation officer, public prosecutor or court is also entitled to require the presence of a defence lawyer in other cases where, in his opinion, the rights and legal interests of the suspect or accused would not be properly defended without the aid of a defence lawyer. In the cases referred to in Article 51 of the Code of Criminal Procedure, where no defence lawyer has been invited by the suspect, accused or convicted person himself or no other persons are invited on the latter's behalf or with his consent, the pre-trial investigation officer, public prosecutor or court must inform the coordinator for the grant of state-guaranteed legal aid in criminal cases of the fact that a defence lawyer is required for the suspect, accused or convicted person and appoint the chosen defence lawyer.</p> <p>In cases in which the presence of a defence lawyer is not required, secondary legal aid is granted if the person's income and assets are consistent with the income and assets levels laid down by the Government.</p> <p>Depending on the person's income and assets, the state guarantees and pays 100% of expenditure on secondary legal aid if the first level of a person's property and income is established, or 50% if the second level of property and income is established.</p> <p>The Law on state-guaranteed legal aid distinguishes two types of lawyer granting secondary legal aid: 1) lawyers who continuously provide secondary legal aid only to the persons eligible for it, and 2) lawyers who provide secondary legal aid in case of necessity. The state-guaranteed legal aid service selects them on the basis of a competition and concludes agreements with them. Lawyers are paid fees for the provision of secondary legal aid. The amount thereof is determined by the Government Decree adopting the amounts of fees payable to lawyers for the provision of secondary legal aid and the rules governing such payment (hereinafter referred to as "the payment rules").</p> <p>The fee paid to lawyers who continuously provide secondary legal aid</p>
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	<p>only to the persons eligible for it is fixed and does not depend on the amount of secondary legal aid provided. They receive each month 7.5 times the minimum monthly wage (LTL 530) plus travelling expenses (return fare) and expenses for the taking of evidence (copying, registration and translation of documents, expert services, etc.) in relation to the provision of secondary legal aid.</p> <p>The fee for lawyers who provide secondary legal aid in case of necessity is paid for each case depending on the complexity of the case (category, stage of the investigation, etc.) The hourly rate is 0.05 times the minimum monthly wage. When a lawyer provides secondary legal aid in the same case to two or three people, the rules provide for this amount to be increased by 50%. When a lawyer provides secondary legal aid in the same case to four or more people, the rules provide for this amount to be increased by 100%.</p> <p>According to the relevant rules, lawyers entered on the list of lawyers practising in Lithuania, who are entitled to pursue activities as a lawyer and who have done so for at least one year are entitled to take part in the competition.</p>
<b>Luxembourg</b>	<p>a) Il y a au Grand-Duché un budget global non limitatif accordé pour l'assistance judiciaire.</p> <p>b) Non. Il n'existe pas de système d'urgence au Grand-Duché fonctionnant 24 heures sur 24. Si l'avocat appelé par le suspect est disponible, il l'assistera, sinon il devra l'attendre et au plus tard, lorsqu'il sera amené devant le juge d'instruction, il lui en sera commis un d'office.</p> <p>c) La loi du 18 août 1995 et le règlement grand-ducal du 18 septembre 1995 réglementent l'assistance judiciaire au Luxembourg.</p> <p>Le Conseil de l'Ordre assure l'assistance des personnes qui ne trouvent pas de défenseur ou dont les ressources sont insuffisantes pour la défense de leurs intérêts.</p> <p>Le Conseil de l'Ordre collabore avec le service d'accueil et d'information juridique. Le Bâtonnier désigne les avocats commis d'office.</p> <p>Pour bénéficier de l'assistance judiciaire, le requérant doit compléter un questionnaire disponible auprès du service central d'assistance sociale et l'adresser au Bâtonnier de l'Ordre des avocats territorialement compétent.</p> <p>Les bénéficiaires en sont les ressortissants luxembourgeois, les ressortissants étrangers autorisés à s'établir dans le pays, les ressortissants d'un Etat membre de l'Union Européenne et les ressortissants étrangers assimilés aux ressortissants luxembourgeois en matière d'assistance judiciaire par l'effet d'un traité international. Le bénéfice de l'assistance judiciaire peut également être accordé à tout autre ressortissant étranger dont les ressources sont insuffisantes, pour les procédures en matière de droit d'asile, d'accès au territoire, de séjour, d'établissement et d'éloignement des étrangers.</p> <p>L'assistance judiciaire est accordée en matière extrajudiciaire et en matière judiciaire, en matière gracieuse ou contentieuse, en demande ou en défense. En matière pénale, l'assistance judiciaire ne couvre pas les frais d'amendes prononcés à charge des condamnés.</p> <p>La décision concernant l'admission ou le refus d'admission à l'assistance judiciaire est notifiée au requérant par les soins du Bâtonnier par voie de lettre recommandée.</p> <p>L'avocat, inscrit au tableau ou admis au stage, qui prête son concours au bénéficiaire de l'assistance judiciaire reçoit une indemnité qui est calculée en raison du nombre d'heures prestées, sur base d'un taux horaire fixé par règlement grand-ducal. Le taux à prendre en considération est celui en vigueur au moment où la prestation de l'avocat</p>

	<p>est terminée.</p> <p>L'avocat commis d'office peut se faire allouer une avance. Le décompte final de l'avocat sera soumis pour avis à l'appréciation du Bâtonnier. Le décompte de l'avocat, accompagné de cet avis, sera transmis au Ministre de la Justice, qui en arrêtera le montant. Les frais couverts par l'assistance judiciaire ainsi que l'indemnité de l'avocat sont à charge de l'Etat.</p> <p>L'administration de l'enregistrement et des domaines est chargée du recouvrement des frais et dépens contre la personne y condamnée qui n'a pas bénéficié d'une assistance judiciaire et, éventuellement, du montant intégral payé par l'Etat contre le bénéficiaire de l'assistance judiciaire sous certaines conditions, à savoir en cas de retrait du bénéfice de l'assistance judiciaire (fausses déclarations de la part du bénéficiaire de l'assistance judiciaire, survenance de liquidités au bénéficiaire de l'assistance judiciaire).</p>															
Malta	<p>(a) Part of Attorney General's Office budget.</p> <p>(b) Yes, with experienced lawyers.</p> <p>(c) Practically granted to all requesting it even though based on financial means.</p>															
The Netherlands	<p>The budget for legal aid in criminal proceedings is € 83.526.000, - in 2002. This is 1,7 % of the criminal justice budget.</p> <p>In the Netherlands the organisation of legal aid is divided in districts. The Counsel of a district makes the schemes for emergency assistance for suspects being arrested. The amount of hours of emergency assistance varies from district to district.</p> <p>Only authorised lawyers work in a scheme for emergency assistance. An authorised lawyer is a lawyer who is registered as member of the bar. To be a member of the bar you need to have finished the criminal bar. Sometimes the counsel requires an annual education in criminal law and the law of criminal procedures.</p> <p>c. Only defendants with low income have the right to legal aid free of charge. For free legal aid the lawyer must be assigned (see question 4) and registered as member of the criminal bar. There is no maximum amount of hours of legal aid. The Counsel of a district pays the lawyers by the hour.</p>															
Poland	<p>(a) Costs relating to legal aid covered by the State Treasury for the total of preparatory and judicial proceedings: the amounts expressed in zlotys</p> <table><tr><td colspan="3">2004 costs of legal aid</td></tr><tr><td>Courts</td><td>74330410</td><td>2,02 % legal aid against the total courts budget</td></tr><tr><td>Prosecutor's Offices</td><td>100156300</td><td>0,07% legal aid against the total prosecutors office budget</td></tr></table> <p>2005 (anticipated expenses relating to legal aid)</p> <table><tr><td>Courts</td><td>69686499</td><td>1,76 legal aid against the total courts budget</td></tr><tr><td>Prosecutor's Offices</td><td>803970 0</td><td>0,08% legal aid against the total prosecutors office budget</td></tr></table> <p>(b) A scheme for emergency assistance for persons detained by the Police.</p> <p>(c) There are no legal provisions concerning a permanent legal assistance operating on a 24-hour basis. Chief Justices of Regional Courts determine the principles of co-operation with Regional Bar Councils with regard to the so-called lawyer's duty hours. In general,</p>	2004 costs of legal aid			Courts	74330410	2,02 % legal aid against the total courts budget	Prosecutor's Offices	100156300	0,07% legal aid against the total prosecutors office budget	Courts	69686499	1,76 legal aid against the total courts budget	Prosecutor's Offices	803970 0	0,08% legal aid against the total prosecutors office budget
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	<p>duty hours last from 9 a.m. till 3 p.m. on workdays, while on Saturdays and Sundays, lawyers designated by Regional Bar Councils have their duty hours on the telephone. The list of lawyers on duty is deposited with the Chief Justice of a court. Legal aid in criminal proceedings may be provided only by practising lawyers (advocates). In the Polish legal system, the legal aid in criminal matters may be provided only by a lawyer (advocate). A lawyer may be designated to be an attorney for a detained person, and a defence counsel for a suspect and later, for an accused. He may be appointed by the person concerned according to his choice or appointed <i>ex officio</i>. A defence counsel for an accused deprived of liberty may be appointed by another person, while for a juvenile or incapacitated person it is his statutory agent or a person having a custody over him to designate a defence counsel.</p> <p>An <i>ex officio</i> defence counsel is designated by of the court after the examination of the motion from a suspect/an accused whose financial position does not allow him/her to cover the costs of defence without prejudice to his and his family's necessary support and maintenance.. An accused/a suspect should duly evidence his financial position. The decision of the Chief Justice may be subject to an appeal. (Article 78 of the Polish Code of Criminal Procedure)</p> <p>An <i>ex officio</i> defence counsel may be also designated by the Chief Justice of a court in cases of a mandatory participation of a defence counsel, provided that an accused has no defence counsel of his choice, when he is minor, deaf, dumb or blind, when there is a good reason to doubt his sanity, (Article 79 (1) (2) of the Polish Code of Criminal Procedure).</p> <p>The costs of legal aid provided <i>ex officio</i> are included in the total of expenses borne by the State Treasury in connection with proceedings (art. 618 of the code of Criminal Procedure). In the event of acquittal or discontinuance of the proceeding the total of expenses is borne by the State Treasury.</p> <p>In the event of conviction and conditional discontinuance of the proceeding the expenses borne to cover an <i>ex officio</i> defence counsel are adjudicated against an accused to the benefit of the State Treasury. In case the financial position of an accused does not allow to cover these expenses, the court may exempt an accused from the obligation to cover them and include them into the expenses of the State Treasury. The Minister of Justice determines the minimum rates for the lawyers and the method for their calculation in the proceedings. Those rates are the basis of valuation of remuneration for the <i>ex officio</i> defence counsels. In the case of defence counsels appointed by the choice of the accused, their remuneration is determined freely by the parties themselves.</p> <p>Polish provisions do not provide for verification of qualifications of the lawyers providing legal aid. If the candidates fulfil certain requirements - see item (b), they can perform duties of a lawyer.</p>
<b>Portugal</b>	<p>a. There is no specific budget for legal aid in the State's general budget.</p> <p>b. There is currently no general system of legal assistance, with lawyers available 24 hours in police stations.</p> <p>However, there was an agreement on 17.07.2002, namely, a Protocol of co-operation between the Law Society (District Council of Madeira), the Prosecution of the Republic of Madeira and the Public Safety Police of Madeira, ensuring that trainee lawyers on the list produced by the Law Society are available, in the respective shifts, to appear in the police</p>

	<p>stations of that region, whenever called, whether it is a legal imperative that a defence lawyer be present, to undertake the appropriate actions, or whether at the request of any citizen detained at the respective police station.</p> <p>c. Point 1 of Article 20 of the Constitution of the Portuguese Republic provides that everyone is assured access to the law and to the Courts for defence of their legally protected rights and interests. Justice cannot be refused for insufficient economic means.</p> <p>The regime of access to the law and to the Courts is defined in Act no. 30-E/2000, of 20 December, which became law on 01 January 2001, repealing the previous law on this material.</p> <p>The system of access to the law and to the Courts is designed to ensure that no one is blocked or impeded, due to their social or cultural condition, or due to insufficient economic means, from knowing, enforcing and defending their rights. The system is supported by actions and mechanisms involving legal information and legal protection.</p> <p>For the purposes of legal information, it is for the government to undertake action, in a permanent and planned way, to ensure that the public is informed of the law and legislation, through publication and other forms of communication. This allows the public to exercise their rights better and to comply with legally established duties.</p> <p>Legal protection is provided through legal consultation and legal support. All citizens of the country and the European Union have access to legal protection, if they demonstrate that they do not have sufficient economic means available to pay the fees of forensic professionals, that become due when they provide their services. They must pay for, in full or in part, the normal charges of a judicial action. Foreigners and displaced persons who habitually reside in Portugal also enjoy legal protection, as do foreigners who do not reside in Portugal, in so far as legal protection is afforded to the Portuguese by the laws of their respective States.</p> <p>Legal assistance is granted in all the Courts, regardless of the action, and also applies, with due alterations, to appeals, and involves the following: total or partial dispensation of the justice tax and other trial charges; deferment of payment of the justice tax and other trial charges; appointment and payment of lawyer's fees, or alternatively, payment of the fees of the legal representative chosen by the defendant.</p> <p>Proof of insufficient economic means can be undertaken by any suitable means. The defendant's statements regarding his economic situation as well as on verification of the facts, on which the legally established presumptions depend, should be accompanied by documents of proof that the defendant makes available. In addition to the provisions of special legislation, there is a presumption of insufficient economic means for the following people: a) those who are receiving food due to economic necessity; b) those who unite the conditions demanded for the grant of any benefit, due to lack of income; c) those whose monthly income from work is equal to, or less than, one and half times the national minimum salary; d) a son or daughter who is a minor, for the purposes of investigating or challenging maternity or paternity; e) those challenging food; f) those holding the right to indemnity for transport accidents.</p> <p>There is no presumption of insufficient economic means, when the defendant is not only receiving the income referred to in line c) above, but also has income of his own or from other people in his care, that as a whole exceeds a sum equivalent of three times the national minimum salary (the national minimum salary is 348 euros in 2002).</p> <p>Where there is any service or attendance to the public involving social</p>
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	<p>services, legal support can be requested. The model formulated has been approved by ministerial order with the support of justice and social services (Order no 140/2002, of 12 February). The service is provided free and can be accessed personally, by fax or by post or electronically, in the last case via the respective digital form, which can be accessed by calling or e-mail.</p> <p>Applications, certificates and other documents requested for the purposes of legal support are exempt of taxes and fees.</p> <p>In the sphere of the penal process, the appointment of a defender to the defendant and the provision of legal aid are made under the terms of the Criminal Proceedings Code. The appointment is preceded by advice to the defendant of his right to choose and instruct a defence lawyer or to request the grant of legal assistance. He is advised that if he does not instruct a defence lawyer nor requests the grant of legal assistance, or if it is not granted to him, he will be responsible for paying his defence lawyer's fees, in remuneration of the services provided, as well as the expenses that the lawyer incurs in his defence (article 42 of Act no. 30-E/2000).</p> <p>The judicial authority responsible for the appointment requests of the District board of the Law society, in the appropriate area, to appoint a lawyer or trainee for the position of defence lawyer, in accordance with legislation on the proceedings. The District Board of the Law Society makes the appointment within five days. If it fails to do so, the judicial authority can proceed to appoint a defence lawyer according to its criteria (article 43 of Act no 30-E/2000).</p> <p>To assist a person detained in the first interview, or at an indictment hearing or at other urgent matters, that could take place in criminal proceedings, the appointment of a lawyer is undertaken independently from the procedure mentioned in the number above. For the purposes of this appointment, the Law Society can arrange scales of attendance of lawyers or trainees, communicating such attendance to the Courts (article 44 of Act no. 30-E/2000).</p> <p>In any case of judicial assistance, lawyers or trainees have the right to receive fees for the services provided, as well as to be reimbursed for expenses incurred, which they must duly prove. The fees due on services provided are stated in the tables proposed by the Law Society and approved by the Justice Ministry and are revised annually (article 48 and 49 of Act No. 30-E/2000 and Instrument No. 150/2002, of 19 February).</p>
<b>Slovak Republic</b>	<p>Costs of Criminal Proceeding that are borne by the State are regulated by the Code of criminal Procedure. The counsel appointed for the accused person shall be entitled to receive a fee and reimbursement of cash expenditures from the State. The fee amount and reimbursement of cash expenditures shall be determined on a motion by a counsel by the authority active in criminal proceeding that issued the final decision.</p>
<b>Spain</b>	<p>(a) The National Budget provides for expenditure on free legal aid for all types of legal proceedings and for 2002 this is set at €25 242 510 for barristers' fees and €2 283 850 for solicitors' fees, for professional services. This budget also covers infrastructure costs and the costs of running the services.</p> <p>The expenditure for lawyers can be broken down as follows: 14% for infrastructure and running the services; and 86% for professional services. Of this 86%, 28% goes to legal aid for people in custody and the remaining 72% for participation in legal, predominately criminal, proceedings (54%).</p> <p>The figures shown above represent 2.78% of the budget for running the</p>

	<p>Justice System.</p> <p>(b) Yes. This is one of the fundamental elements in our system. The Spanish Constitution recognises as a fundamental human right the right to effective legal protection and the right to defence and to legal aid (Art. 24), Art. 17 specifying that “the assistance of a lawyer is guaranteed to persons detained in police custody under the terms established by law”. Arts. 520 and 788 of the LECR (code of criminal procedure) uphold the suspect’s right to legal aid through strong guarantees which are scrupulously complied with by all the Bar Associations in Spain. They maintain constant 24-hour on-call schemes to make the legal aid service available to suspects. Regardless of which detention centre they are in, all suspects are guaranteed the right to the assistance of a lawyer for all police action, immediately and in any case within 8 hours of the police authorities informing the Bar Association that a person is in custody, and the presence of a lawyer is required.</p> <p>Lawyers taking part in this scheme are required to have been active in their profession for a minimum of three years and to have taken a specialised course run by their Bar Association. There is a special on-call shift system for lawyers specialising in criminal liability of minors, to assist them when they are detained.</p> <p>(c) System for granting legal aid in criminal proceedings</p> <p>The following have the right to free legal aid under criminal law: Spanish citizens, citizens of the other Member States of the European Union and all foreigners with or without legal residence in Spain, if they can prove lack of funds for litigation.</p> <p>The requirements for granting aid are that income from all sources and per family unit is not more than double the national minimum wage applying at the time the application is made. At present, and as of January 2002, the monthly national minimum wage in Spain is €442.20; therefore the income that must be proved for the right to free legal aid must be below €884.40 per month.</p> <p>In the capital of each Province there is a Free Legal Aid Committee, with joint membership (Public Prosecutor’s Office, Lawyers, representatives from the Ministry of Justice) which decides whether or not to grant applicants the appointment of a lawyer.</p> <p>Lawyers are paid through their Bar Associations to be charged to the budgets which the Government allocates annually for free legal aid (See paragraph a).</p> <p>Lawyers who participate in this scheme must be members of the corresponding Bar Association and meet all the professional qualification requirements any lawyer must have to practise law in Spain. Registration of lawyers in these lists is voluntary and the allocation of the lawyer to the applicants is by strict rotation, the applicant having no right to choose a specific lawyer, other than the one whose turn it is.</p>
<b>Sweden</b>	<p>(a) The item of expenditure for public defence counsel was for 2001 527 000 000 SEK (approx. 55 500 000 EURO) and is for 2002 estimated to 554 000 000 SEK (approx. 58 000 000 EURO). This constitutes approx. 88 % of the total criminal justice budget.</p> <p>(b) No. Any lawyer (with the title “advokat”) can anytime be asked to assist a suspect in a criminal case, often after a specific request from the suspect. There are, however, certain schemes of lawyers at the courts which have a duty to try questions of detention during the weekends. These lawyers have the same qualifications as any other lawyer in Sweden.</p> <p>(c) Legal aid to suspects in criminal cases is provided by rules concerning</p>

	<p>the right to a public defence counsel. A public defence counsel will always be given to a suspect of a serious criminal offence and always when a person is taken in to custody. For minor offences, a public defence counsel is only available if there are special reasons (see below under 4). The suspect's economic situation has no relevance. It is for the court to decide whether a public defence counsel should be appointed or not. The suspect's choice of public defence counsel shall, however, be granted unless it would substantially increase the costs or if special circumstances indicate that the appointment should not be made. Only lawyers that are members of the Swedish Bar Association and therefore have the title "advokat" can, as a main rule, be appointed as public defence counsel. He or she will help the suspect in all matters relating to the criminal proceeding and will also be present at the trial. It is the suspect himself who chose the counsel.</p> <p>The fee to the public defence counsel is paid by the State. The court decides the fee and as a rule the counsel is paid by the hour at a rate which the government decide each year. The rate for 2002 is 1 162 SEK (approx. 122 EURO). As a rule the rate is followed but the court can decide a lower or a higher rate depending on the counsels qualification and how well the assignment is performed. There is also a fixed fee, which is applicable in minor cases corresponding with the duration of the proceeding (maximum 12 535 SEK for 3 h 45 min. proceedings). In other cases there are no maximum amounts. A public defence counsel is not allowed to ask his or her client for any additional fee.</p> <p>If the suspect is acquitted he or she does not have to refund anything to the state. If the suspect is convicted he or she has to reimburse the State the costs for the public defence counsel and for the counsel for the aggrieved person. However, he or she does not have to pay more than is reasonable with regard to his or her economic situation (2 –40 percent of the fee). The court can decide that a convicted person not should reimburse any costs. This is common procedure for example when the convicted is imprisoned for a substantial time.</p>
<p><b>United Kingdom</b>  <b>England and Wales</b>  <b>and Scotland</b></p>	<p><u>England &amp; Wales</u></p> <p>(a) £0.96 billion, which is 6.07% of the total criminal justice budget.</p> <p>(b) Advice and assistance is available without reference to their financial resources to anyone who is arrested and held in custody at a police station or other premises. Initial advice may be given by telephone followed by attendance in person.</p> <p>Suspects and defendants may consult a lawyer of their own choosing from among private sector lawyers under contract to the Legal Services Commission (LSC), or from the Public Defender Service which is funded by the LSC. No defendant would be forced to choose a public defender where a private practice lawyer existed as an alternative.</p> <p>(c) Where a defendant appears before any criminal court, he may apply for a <u>representation order</u> which will entitle him to the services of a solicitor and/or barrister depending on the type of case. A representation order covers all criminal proceedings; preliminary or incidental including any related bail proceedings. There is no means test to decide <u>eligibility</u> for representation. The court must be satisfied that it is in the interests of justice that publicly funded representation should be granted. In deciding this, the court will take into account whether the charge against the applicant is so serious that they may be imprisoned or lose their job if convicted, or if there is a substantial point of law to be considered in judging the case.</p> <p>The court will also take into account whether the applicant is unable to</p>

	<p>state his or her own case, either because he or she does not speak English well, or is mentally ill, or suffers from some form of disability which will make it difficult for him or her to understand the proceedings. The court will also consider whether it is in someone else's interest that the applicant be represented.</p> <p>Where a case is heard in the magistrates' court, no details of the applicant's means are required, as there is no power to recover the cost of the applicant's representation. However, where a case is heard in the Crown Court or a higher court on appeal, the applicant must provide details of his or her means to the court. <u>At the end of the case</u>, the trial judge has a power to order the defendant to pay back some or all of the costs of his or her defence. A judge should not take into account the defendant's income where it is less than £24,500 gross, or the first £3000 available capital or the first £100,000 equity in the defendant's principal residence, other than in exceptional circumstances, when he makes a Recovery of Defence Costs Order.</p> <p>The representation order covers obtaining advice on appeal and an application for a further representation order can be made directly to the Court of Appeal to cover those proceedings.</p> <p>A detained person is entitled to free legal <u>advice</u> and when taken to court can have free legal <u>assistance</u> from the duty solicitor, or a solicitor of his or her own choice. The duty solicitor can help the defendant apply for a representation order where the defendant has not already applied for one. Legal representation in criminal proceedings is provided by private sector lawyers under contract to the Legal Services Commission (LSC), and by the Public Defender Service which is funded by the LSC. Advice centre staff cannot represent individuals in criminal proceedings.</p> <p>The fees paid to solicitors and counsel acting for the accused in criminal proceedings are governed by the Access to Justice Act 1999 and the Criminal Defence Service (Funding) Order 2001. The majority of payments made in magistrates' court proceedings are standard fees. These cover all aspects of the case, including advocacy.</p> <p>In the Crown Court there is a system of standard or graduated fees. In non-standard/graduated fee cases (the longer cases) the remuneration of legal representatives is determined on the basis of fees considered to be reasonable for work actually and reasonably done. In some of the extremely long and complex cases with large numbers of witnesses and large amounts of evidence (e.g. complex commercial fraud or drugs trials), the Legal Services Commission introduced individual contracts for these cases, in order to control the costs and quality of the work. The contracts are staged and fees agreed by the Commission with solicitors and barristers at the beginning of each stage. These cases are known as Very High Cost Criminal Cases (VHCCCs).</p> <p><u>Scotland</u></p> <p>There is no budget prescribed for criminal legal aid; Scottish Ministers are required to fund all cases that meet the statutory tests and for which legal aid is granted by the Courts or the Scottish Legal Aid Board. Expenditure in 2000/01 on both advice on criminal matters and criminal legal aid was £79.663m, which represented 8% of the total criminal justice budget.</p> <p>(b) The State funded duty solicitor scheme in Scotland normally only provides legal representation for those appearing from custody before the Court. The scheme does not cover attendance at police stations except for identification parades or where the accused has been charged with murder, attempted murder or culpable homicide.</p>
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	<p>Solicitors participating in the duty solicitor scheme have to be members of the Law Society and be registered with the Scottish Legal Aid Board to undertake criminal legal assistance</p> <p>(c) A solicitor may provide free legal advice on any criminal matter provided that the client earns less than £80 per week, after taking into account certain outgoings; if the client earns between £80 and £189 per week, after taking into account certain outgoings, a contribution may be due. If the client earns above £189 per week, legal advice under the legal aid scheme is not available. There are additional detailed rules governing capital and state benefits that affect eligibility and contributions. There is no maximum sum that can be paid to a solicitor for such advice but the prior approval of the Scottish Legal Aid Board is needed for expenditure over £150. The solicitor is paid by the Legal Aid Fund for the work (and outlays) undertaken in giving advice based on statutorily prescribed hourly rates, after deduction of any contribution by the client. Solicitors providing advice have to be members of the Law Society.</p> <p>Criminal legal aid in solemn cases – that is those involving a jury - is granted by the court and is assessed on whether the costs of the case cannot be met without undue hardship to him or his dependants. No contribution is required. Solicitors providing representation have to be members of the Law Society and be registered with the Scottish Legal Aid Board to undertake criminal legal assistance. The solicitor is paid by the Legal Aid Fund for the work (and outlays) undertaken in providing such representation, based on statutorily prescribed hourly rates. There is no maximum sum that can be paid to a solicitor for such representation</p> <p>Criminal legal aid in summary cases – that is, those not involving a jury - is granted by the Board and is assessed on (a) whether the costs of the case cannot be met without undue hardship to him or his dependants and (b) it is in the interests of justice that legal aid should be made available. No contribution is required. Solicitors providing representation have to be members of the Law Society and be registered with the Scottish Legal Aid Board to undertake criminal legal assistance. The solicitor is paid by the Legal Aid Fund for the work (and outlays) undertaken in providing such representation, either by a prescribed fixed payment or in certain cases, based on statutorily prescribed hourly rates. There is no maximum sum that can be paid to a solicitor for such representation.</p>
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<b>Question 3</b>	<b>3) Are investigating officers other than police officers (such as customs officers and immigration officers) bound by any legislation or Code of Professional Conduct to respect the rights of individuals they are investigating? If so, please give details.</b>
<b>Austria</b>	<p>Immigration authorities in Austria have no jurisdiction in the area of criminal law investigations or prosecution. If, during the course of their official activities, immigration officers learn of a criminal action which is officially liable to prosecution, they are obliged to notify the police or the local constabulary, a public prosecutor or a court which is involved in criminal cases.</p> <p>For the procedure which the agents of the customs authorities have to observe during their investigations, the Financial Crime Act (FinStrG) contains comprehensive provisions; if the court is called upon for a decision on the criminal action – the line of demarcation between the jurisdictions of court and custom authorities usually depends on the scale of the potential penalty – the provisions of the Code of Criminal Procedure (StPO) shall also apply.</p>
<b>Belgium</b>	<p>Seuls les fonctionnaires de police judiciaire sont habilités, conformément à l'article 8 du Code d'instruction criminelle, à rechercher les infractions, leurs auteurs et à en rassembler les preuves. En effet, la Constitution belge prévoit expressément le principe selon lequel « nul ne peut être poursuivi que dans les cas prévus par la loi, et dans la forme qu'elle prescrit » (article 7 Const).</p> <p>En outre, dans l'exercice de leurs missions de police administrative ou judiciaire, les services de police veillent au respect et contribuent à la protection des libertés et des droits individuels, ainsi qu'au développement démocratique de la société (article 1 de la loi du 5 août 1992 sur la fonction de police). Les libertés et droits individuels visés comprennent les droits et libertés tels que définis dans la Constitution belge et dans la Convention européenne des droits de l'Homme.</p>
<b>Cyprus</b>	<p>Every investigating officer is bound by the constitutional provisions of human rights to respect the rights of every individual whom he is investigating. According to articles 9 and 10 of Cap. 155, if the arrested person refuses by violence to be investigated, the investigating officers shall always use only such violence as it is necessary and reasonable to be used in order to break down his resistance. In addition to that every investigating officer shall always inform the investigated person about the reason of the investigation, showing to him at the same time the relevant warrant. If a person has been directed to a police station for investigations but such investigations do not proceed within a reasonable period of time, the investigating officers shall dismiss the person with such terms and conditions, as it is provided by law, but in any case shall not keep this person under detention. (article 17 of Cap.155.)</p>
<b>Czech Republic</b>	<p>Like agencies involved in criminal proceedings, investigating officers other than police officers are bound by the relevant legislation of procedural character – mainly Criminal Proceedings Code. This law speaks about customs officers who are under specific conditions entitled to execute all acts of criminal proceedings to which agencies involved in criminal proceedings are entitled. Therefore, they must respect all rights of individuals who are subjected to their investigation.</p>
<b>Denmark</b>	<p>Since the European Convention on Human Rights is part of Danish law the procedural safeguards, which are guaranteed therein, are binding for all types of investigating officers.</p>
<b>Estonia</b>	<p>All the investigating officers and authorities are bound by the</p>

	Constitution of Estonia and the Code of Criminal Procedure where all the rights and freedoms of the suspects and defendants are described in detail. All these rights are mandatory to all the law-enforcement officers.
<b>Finland</b>	Finland applies Rule of Law-principle. All investigating officers are bound by law regulating their procedures. In case of improper action the authorities can be charged with violation or negligent violation of official duty and they can be sentenced to fine or up to one year imprisonment and possible damages to the injured party.
<b>France</b>	Question ne relevant pas de la compétence du bureau.
<b>Germany</b>	Investigating officers other than police officers are bound by the same legislation to respect the rights of parties to proceedings.
<b>Greece</b>	All investigative officers are required by law to follow the criminal procedure as set forth in the CCrP and in all relevant secondary legislation. The existing legal framework provides for a detailed account of the rights of the suspect or accused person, as described <i>supra</i> .
<b>Hungary</b>	All investigating officers have to follow the Criminal Procedure Act, which provides for the rights of the suspect as well.
<b>Ireland</b>	Investigating officers must act within the law and respect an individual's constitutional and legal rights. In cases involving a breach of constitutional rights such as the right to bodily integrity or the inviolability of a dwelling house the courts would apply a strict exclusionary rule in relation to evidence gathered, except if it could be shown that there were extraordinary excusing circumstances sufficient to justify the breach e.g. to save a life. In cases involving the interference with legal but not constitutional rights then the courts would exercise discretion as to whether to exclude the evidence gathered.
<b>Italy</b>	All public officials performing criminal investigation tasks – whether on a temporary or permanent basis – are subject, when carrying out any activity that may be used in a criminal trial, to the rules on criminal police investigations set out in the Code of Criminal Procedure.
<b>Latvia</b>	--
<b>Lithuania</b>	Pre-trial investigation bodies and officers – be they the police or other bodies – are required to comply with the provisions of the Code of Criminal Procedure and to respect and observe the human rights of the suspect. When carrying out a preliminary investigation, officers must also comply with the code of ethics applicable to them. In addition to the code of ethics for the Lithuanian police, there is also a code of ethics for Lithuanian public prosecutors, rules governing the activities of the Prosecutors' Ethics Committee, a code of ethics for customs officials and code of ethics of the Financial Crime Investigation Service within the Ministry of Interior.
<b>Luxembourg</b>	Le code d'instruction criminelle dans ses articles concernant les officiers de police judiciaire constitue la base légale des pouvoirs de ces fonctionnaires. Le titre II de ce code traite des enquêtes préliminaires ainsi que des vérifications d'identité et prévoit toutes les garanties nécessaires au respect des droits de l'homme dans ce domaine. De plus, d'après l'article 8 les personnes qui concourent à la procédure de l'enquête ou de l'instruction sont soumis au secret professionnel. Le respect de ces formalités est soumis à la surveillance du Procureur Général d'Etat.
<b>Malta</b>	In practice the same principles applicable to the police are used.
<b>The Netherlands</b>	In the Netherlands there is in customs affairs and immigration affairs a distinction between the power to investigate and the power to inspect.

	Inspecting officers are bound by special legislation such as the Customs law and Immigration law. Investigating officers are, just like the police officers, bound by the Code of Criminal proceedings.
<b>Poland</b>	<p>Border Guards, Agency for Internal Security, financial control institutions, Forest Guards, national parks institutions as well as National Hunting Guards are competent to conduct preparatory proceedings under special laws.</p> <p>Those institutions apply the provisions of the Code of Criminal Procedure to conducted criminal proceedings. The suspect's rights in these proceedings are guaranteed in the same way as it is done under the investigation proceedings led by prosecutor's office and the police. The proceeding in connection with foreigners' stay and deportation is an administrative proceeding. Administrative decisions are issued with respect of these cases. They may be appealed against by persons concerned, in the higher administrative instance.</p>
<b>Portugal</b>	<p>These services, when they undertake investigative functions conferred upon them by law, are considered as organs of the criminal police. They are generically governed, with due adaptations, by the Portuguese Criminal Code.</p> <p>Therefore, the Statute of Staff of the Service of Foreigners and Frontiers (Act no. 252/2000, of 16 October 2000) establishes that their agents, considered as criminal police authorities, for the purposes of the criminal law, must in all circumstances, defend and respect the life and physical and moral integrity of persons. They must use persuasion as a method of acting and can use force only in cases of absolute necessity. Force can only be used in cases expressly provided by law. Methods of coercion can only be employed in the following cases: to repel imminent aggression, or in self-defence or in the defence of the third parties; to overcome violent resistance in the execution of a service, in the exercise of their functions, and to maintain authority having made it unmistakably clear that obedience is required and having exhausted all possible methods to achieve it.</p> <p>The General Board of Customs and Special Taxes on Consumption, has as its mission to exercise control over the external community frontier and national customs territory for fiscal and economic purposes and for protection of society. For the purposes of tax inspection, it must request the intervention of the police services and security forces.</p>
<b>Slovak Republic</b>	--
<b>Spain</b>	All non-police officers participating in an investigation are required to respect the rights of individuals they are investigating by constitutional order (Art. 10 of the Constitution) which obliges them to interpret all the constitutional regulations relating to fundamental rights and freedoms in accordance with the Declaration of Human Rights and the relevant international Agreements and Treaties to which Spain is a signatory.
<b>Sweden</b>	Custom officers are bound by the same legislation respecting individual rights as other officials investigating crimes.
<b>United Kingdom</b>	<p><u>England &amp; Wales</u> Yes. Customs and Immigration Officers are bound by the Police and Criminal Evidence Act 1984 (Immigration (PACE Codes of Practice) Direction 2000).</p> <p><u>Scotland</u> In Scotland, investigating agencies are public authorities. As such they and their staff are bound under United Kingdom legislation to observe the rights and freedoms of individuals as contained in the European Convention on Human Rights.</p>



**Pre-charge/charge**

<p><b>Question 4</b></p>	<p><b>4) Access to a lawyer</b>  <b>(a) What are the mechanisms and time limits for giving a suspect access to a lawyer?</b>  <b>(b) Is the lawyer present throughout questioning if the suspect wishes it?</b>  <b>(c) What is the evidential value of a confession made by a suspect in the absence of his lawyer?</b></p>
<p><b>Austria</b></p>	<p>Pre-charge/charge  The way in which the questionnaire is organised suggests that “charge” refers to a stage in the proceedings which does not exist in a number of continental European legal systems. In the Austrian legal system, the term “charge” refers to the formal accusation by the prosecutor by means of an indictment or a petition for a penalty or sentence at the end of the investigation proceedings. This has the effect of initiating the main proceedings – if need be after intermediate proceedings which serve to prepare for the main proceedings. Under the Austrian Code of Criminal Procedure, the stage in the proceedings which is here designated “pre-charge/charge” is part of the preliminary proceedings.  (a) Every suspect is free to authorise a counsel of his choice to defend him at any time. If a defendant who is not yet represented by a defence counsel is remanded in custody, and custody proceedings have to be instituted (within 14 days of arrest) for the court to decide whether remand in custody should be terminated or continued, the defendant must be assigned a defence counsel immediately (by decision of the court). The defence counsel will be appointed by the appropriate professional association of lawyers, if possible from a list of lawyers who have declared that they are willing to assume defences of this nature (§ 42 paragraph 2 of the Code of Criminal Procedure). The assigned defence counsel must represent the defendant for as long as he is in custody, especially cases of remand in custody as described or where a complaint of a miscellaneous nature has been lodged against a decision which has been made there. Subsequently – if the financial conditions are present - a legally aided defence counsel must intervene (see response to Question 2c). Otherwise the Court must appoint an official defence counsel, whose costs must be borne by the defendant (§ 41 paragraph 3 of the Code of Criminal Procedure). The appointment of an assigned defence counsel is terminated on the intervention of a defence counsel chosen by the defendant (§ 42 paragraph 3 of the Code of Criminal Procedure).  If defence is mandatory for the main hearings, the court will in its summons to the main proceedings require the defendant to authorise a counsel to defend him, and inform the court as such, or if necessary request that a legal aid defence counsel be appointed. If the defendant fails to appoint a defence counsel of his own choosing, and the conditions for the assignment of legal aid defence counsel are not present, the court will assign the defendant an official defence counsel, whose costs the defendant must bear himself (§ 42 paragraph 3 of the Code of Criminal Procedure).  (b) In principle, current procedural law does not provide for the presence of a defence counsel either during questioning by the police or local constabulary or when the defendant is questioned by the examining judge.  (c) Fixed laws of evidence are alien to the Austrian law of criminal procedure. In its consideration of the evidence, the court making the decision will examine a confession for credibility no differently from any</p>

	<p>other evidence (§ 258 of the Code of Criminal Procedure). A confession by the defendant does not release the examining judge from the duty of establishing the facts of the case as exhaustively as possible (§ 206, first sentence, of the Code of Criminal Procedure StPO). Whether a defendant makes a confession in the presence of his defence counsel (especially in the main proceedings), or in his absence, is, on the other hand, of no legal significance.</p>
<b>Belgium</b>	<p>(a) Les règles suivantes sont d'application pendant l'instruction. La présence et l'intervention d'un avocat sont réglées légalement en ce qui concerne la procédure devant les juridictions d'instruction dans le cadre de l'application de la loi du 20 juillet 1990 relative à la détention préventive.</p> <p>Lorsque le juge d'instruction veut procéder à l'arrestation de l'inculpé, il doit l'informer qu'il a le droit de choisir un avocat. S'il n'a choisi ou ne choisit aucun avocat, le juge en informe le bâtonnier de l'Ordre des avocats ou son délégué (article 16, §4, de la loi relative à la détention préventive). La loi ne précise pas ce qui doit se passer ensuite. Dans la pratique, le bâtonnier désigne sur la base de la liste des avocats stagiaires un avocat pro deo. Naturellement, l'inculpé a la liberté de choisir ultérieurement son propre avocat s'il dispose de moyens suffisants.</p> <p>La loi permet en outre que l'inculpé introduise une demande d'assistance judiciaire gratuite dès le premier interrogatoire par le juge d'instruction (article 184bis, alinéa 2, du Code d'Instruction criminelle).</p> <p>L'article 20 de la loi relative à la détention préventive prévoit qu'immédiatement après la première audition par le juge d'instruction, l'inculpé peut communiquer librement avec son avocat. Celui-ci dispose ainsi du droit de rendre éventuellement visite à l'inculpé en prison, de consulter son dossier et de l'assister lors de la première comparution (au plus tard cinq jours après délivrance du mandat d'arrêt), puis des comparutions mensuelles devant la chambre du conseil, ce jusqu'au règlement de la procédure par les juridictions d'instruction et ensuite naturellement pendant la procédure sur le fond.</p> <p>Selon le droit belge, un prévenu peut assurer lui-même sa défense ou se faire assister par un avocat. L'article 6.3.c de la CEDH prévoit en effet pour le prévenu le droit de se défendre lui-même ou d'avoir l'assistance d'un défenseur de son choix et, s'il n'a pas les moyens de rémunérer un défenseur, de pouvoir être assisté gratuitement par un avocat d'office, lorsque les intérêts de la justice l'exigent.</p> <p>Il n'existe toutefois aucune disposition légale autorisant ou obligeant un tribunal à désigner un conseil d'office ou à la demande du prévenu. La jurisprudence de la Cour de cassation le confirme. En revanche, le prévenu ne disposant pas de moyens suffisants peut déposer une requête qui sera transmise au bureau de consultation et de défense en vue de la désignation d'un conseil. Cette demande d'assistance doit intervenir trois jours au moins avant celui fixé pour l'audience (article 184bis, alinéa 1er, du Code d'Instruction criminelle).</p> <p>Enfin, il convient toutefois de faire observer que selon le droit belge, le droit de se défendre soi-même n'est pas un droit absolu. Les autorités peuvent imposer au prévenu de se faire assister par un avocat dans des cas déterminés. Il en va ainsi pour la Cour d'assises (article 294 du Code d'Instruction criminelle) ainsi qu'en matière de protection de la jeunesse (article 54bis de la loi relative à la protection de la jeunesse) et pour les internements (voir article 28 de la loi de défense sociale).</p> <p>(b) Conformément au droit belge, l'avocat ne peut être présent pendant que sont posés les actes d'instruction et il ne dispose d'aucun droit de</p>

	<p>participation. L'interrogatoire du suspect se déroule hors la présence de quiconque, excepté celle des agents du service d'ordre lorsqu'une personne est en état d'arrestation et sous réserve de la possibilité de procéder à une confrontation. La personne interrogée n'est pas obligée de parler, mais on n'est pas tenu de le lui dire expressément, comme c'est le cas dans d'autres pays. Après qu'elle a lu sa déposition ou que lecture lui en a été donnée, elle est invitée à la signer. Elle n'est pas non plus tenue de le faire et aura ultérieurement la possibilité d'expliquer devant la juridiction de jugement pourquoi elle n'a pas voulu signer sa déposition.</p> <p>(c) L'avocat n'étant pas présent lors d'un interrogatoire, son absence n'a aucun impact sur la valeur probante des aveux faits par un suspect. Selon la jurisprudence en la matière, l'aveu n'a pas de valeur probante particulière. Il ne constitue pas, en matière pénale, une dispense de preuve et il ne vaut que comme présomption. Son appréciation relève de l'appréciation souveraine du juge du fond (Bruxelles, 7 septembre 1994, Rev.dr.pén.crim., 1995, page 91 et 19 janvier 1998, JLMB, 1999, page 240). En outre, l'aveu peut toujours être librement rétracté. Cette rétractation est également librement appréciée par le juge du fond. Un aveu obtenu illégalement ou sur la base d'éléments de preuve obtenus irrégulièrement doit être écarté des débats.</p>
<b>Cyprus</b>	<p>(a) According to Article 30(3)(d) of the Constitution, "every person has the right to have a lawyer of his own choice and to have free legal assistance, where the interests of justice so require, as provided by law". Therefore, if the requirements to give a person legal aid, as these are provided for in Law 165(I) of 2002 for Legal Aid are fulfilled, legal aid is granted. In paragraph 2 of the same article, the principle of fair trial is established, which is strengthened by the notion of reasonable time, within which a potential trial shall take place. In addition to that, the notion of reasonable time is also established Article 30(3)(b) of the Constitution, where it is provided that every person has the right to present his case before the court and to have sufficient time necessary for its preparation. Furthermore, as it has already been mentioned, the Court may assign a lawyer to the accused based on article 64 of the Criminal Procedure Rules.</p> <p>(b) The lawyer can be present throughout questioning, if the suspect wishes it.</p> <p>(c) The evidential value which is given (by the judicial authorities and basically during the trial) to a confession given by a suspect in the absence of his lawyer is of a high level, since such confession is considered to be given with the consent of the accused, although such value will be eliminated, if it is proved that the confession was made without the consent of the accused, by illegal means and, in any case non voluntarily. The evidential value of a confession made by the accused is illustrated in article 68 of the Cap. 155, where it is provided that " if the accused pleads guilty and the Court is satisfied that he understood the nature of his plea, the Court shall proceed as if the accused had been convicted by the judgement of the Court.</p>
<b>Czech Republic</b>	<p>(a) The right to legal aid is provided in the law of the highest legal force – the Charter of Fundamental Rights and Freedoms. Everybody has the right to legal aid in the court proceedings. Furthermore, the Criminal Proceedings Code provides for this right as well. Every suspect has access to legal aid in criminal proceedings from the beginning of this proceeding. A suspect may select a defence counsellor by himself or his relatives may select him. However, a suspect</p>

	<p>doesn't have to be represented by the counsellor; he may defend himself. The lawyer can act on behalf of the suspect already during the pre-trial stage and obviously during consequential stages of criminal proceedings. A suspect may consult a counsellor during the acts executed by the agencies involved in criminal proceedings.</p> <p>As it has already been mentioned, in certain cases compulsory defence is to be applied and a suspect must be represented by the counsellor. If a suspect in this case doesn't select any counsellor, the agencies involved in criminal proceedings must appoint one for him.</p> <p>(b) Yes, the lawyer has the right to be present throughout questioning if the suspect wishes it. A suspect may require to be questioned in presence of his defence counsellor. However, a suspect cannot consult a defence counsellor on how to answer to the question already raised by agency involved in criminal proceedings within the questioning.</p> <p>(c) It depends on whether a suspect wished to be questioned in the presence of his defence counsellor or not. If the presence of the counsellor were not requested (and it wasn't a case of compulsory defence), than such a confession would be admissible evidence. However, if despite the request of suspect for the presence of his/her defence counsellor this counsellor was not present when a suspect made a confession, it should be considered as an infringement of the procedural rights of suspect.</p>
<b>Denmark</b>	<p>(a) As noted above, any person charged with a crime sanctioned by more than a fine is informed of the right to have assigned a lawyer. The formal assignment of a lawyer is done by the court, but if interrogations cannot await such a decision, and the person requests a lawyer, a lawyer can be assigned informally until the court makes its decision. There is no formal time limit for giving a suspect access to a lawyer, but according to circular letter of 16 June 2001 the information must be given without undue delay.</p> <p>(b) The defence lawyer has an unconditional right to be present throughout the questioning of a suspect, cf. AJA, section 745 (2).</p> <p>(c) There is no formal evidential rules defining the value of a confession made by a suspect in the absence of a lawyer, but if the mandatory assignment of a lawyer in the mandatory cases set out in section 733 is forgotten, a indictment can be rescinded.</p> <p>The general rule in Danish law is that the court is free to evaluate the evidence presented, taking all relevant circumstances into account. In a case, where a confession is made without the presence of a lawyer this could therefore be taken into account.</p>
<b>Estonia</b>	<p>(a) A preliminary investigator shall always ask from a suspect if he or she needs the participation of a criminal defence counsel. If a suspect needs the participation of counsel or the participation is mandatory according to law, the preliminary investigator shall make the ruling and appoint the counsel at the expense of the state and send it quickly (via fax) to the Estonian Bar Association or call a certain advocate. As no one shall be held in custody over forty-eight hours without the permission of a court to this effect and a suspect shall be interrogated not later than within twenty-four hours after his or her detention, access to a lawyer has to be given within twenty-four hours from detention.</p> <p>(b) Yes, the lawyer is present throughout questioning if the participation is mandatory ( look above article 2 b in the questionnaire) or if the suspect wishes so.</p> <p>(c) If a suspect asked for criminal defence counsel or the participation of the criminal defence counsel was mandatory and a confession was made in the absence of his lawyer, this confession cannot be considered as</p>

	evidence.
<b>Finland</b>	<p>(a) The suspect/accused has a right to a counsel in all instances starting from the investigative proceedings (including the first questioning by the police). There is no time limit, suspect can have a lawyer on demand at any time.</p> <p>(b) Yes.</p> <p>(c) The Finnish legal system is based on the principle of freedom of Evidence and Proof. This has several consequences on the rule of Evidence. One is that the evidence value of single evidence is not regulated in laws. Also the evidential value of a confession is not depending from the absence or presence of the lawyer.</p>
<b>France</b>	<p>(a) Lorsqu'une personne est placée en garde à vue et qu'elle souhaite s'entretenir avec un avocat, l'officier de police judiciaire doit immédiatement avisé soit l'avocat désigné, soit l'avocat commis d'office par le bâtonnier.</p> <p>Lorsque à l'issue de sa garde à vue le suspect est immédiatement présenté à un juge d'instruction pour que soit envisagée sa mise en examen ou qu'il comparait immédiatement devant le tribunal, il peut choisir un avocat ou demander à ce qu'il lui en soit désigné par le bâtonnier.</p> <p>L'avocat ainsi désigné ou choisi peut s'entretenir immédiatement avec son client et consulter sur le champ le dossier. Si le suspect dispose de ressources inférieures au plafond de ressources pour bénéficier de l'aide juridictionnelle, l'avocat est rétribué par l'Etat. Dans ces situations de désignation d'office, l'admission à l'aide juridictionnelle est examinée après la procédure.</p> <p>Lorsque le suspect est convoqué devant le juge d'instruction pour être mis en examen ou devant le tribunal, les délais minimum prévus par la procédure permettent de choisir un avocat. En cas de ressources insuffisantes, une demande d'admission à l'aide juridictionnelle peut être faite par le suspect, laquelle peut le cas échéant être accordée à titre provisoire en cas d'urgence.</p> <p>En matière criminelle devant la cour d'assises et pour les mineurs, l'assistance d'un avocat est obligatoire. Si la personne n'a pas choisi d'avocat, il lui en est désigné un d'office. Si les ressources de l'intéressé ne sont pas suffisantes, l'avocat est rétribué au titre de l'aide juridictionnelle.</p> <p>(b) Le code de procédure pénale prévoit au cours de la garde à vue des périodes durant lesquelles la personne gardée à vue pourra s'entretenir avec un avocat. Toutefois, il n'est pas prévu que l'avocat puisse assister à l'ensemble de la garde à vue, aux interrogatoires, ni-même à tout autre acte de la procédure (art. 63-4 du CPP)</p> <p>De manière générale, le code de procédure pénale prévoit au cours d'une garde à vue, -si la personne a demandé à s'entretenir avec un avocat ou dans les cas où cet entretien est obligatoire (voir point 1) - un entretien avec un avocat d'une durée d'une trentaine de minutes, dès le début de la garde à vue, à l'issue de la vingtième heure et en cas de prolongation de la garde à vue, à l'issue de la douzième heure de cette prolongation.</p> <p>En matière de criminalité organisée, l'entretien avec un avocat peut avoir lieu en cas de prolongation de la garde à vue à l'issue de la douzième heure de cette prolongation (art. 63-4 du CPP)</p> <p>En matière de terrorisme et de trafic de stupéfiants (garde à vue pouvant durer 96 heures (voir point 5.)), l'entretien avec un avocat peut avoir lieu en cas de prolongation de la garde à vue, à l'issue de la soixante-douzième heure de la garde à vue (art 63-4 dernier alinéa du CPP).</p> <p>(c) Dans la mesure où l'interrogatoire d'un suspect ne peut se faire en</p>

	<p>présence de son avocat, la question particulière de la valeur probante des aveux faits par un suspect en l'absence de son avocat ne se pose pas.</p> <p>Le principe en droit français étant celui de la liberté de la preuve (résultant des articles 353 et 427 du CPP), dans la mesure où les règles d'accomplissement des actes ayant permis d'établir des preuves ont été respectées, la loi n'accorde pas à certaines preuves de manière spécifique et donc aux aveux de force probante particulière. La cour d'assises ou le tribunal correctionnel décident en fonction de leur intime conviction (art.353 pour la cour d'assises et 427 pour le tribunal correctionnel).</p> <p>Pour la phase du jugement en matière correctionnelle, l'article 428 du CPP dispose que l'aveu, comme tout élément de preuve, est laissé à la libre appréciation des juges.</p> <p>Ainsi, il est possible en pratique qu'une personne qui fait des aveux et qui se rétracte, soit relaxée (en matière correctionnelle) ou acquittée (en matière criminelle), si le tribunal ou la cour d'assises sont convaincus par d'autres preuves que la personne n'a pas commis les faits.</p>
<b>Germany</b>	<p>(a) Pursuant to Section 136 paragraph 1 sentence 2 StPO, the accused shall be advised at the commencement of the first examination, after he has been informed of the offence with which he is charged and the applicable penal provisions, that the law grants him the right to respond to the accusation or not to make any statements on the charges <u>and</u> to consult with defence counsel of his choice at any time, even prior to his examination.</p> <p>The defendant shall be notified of his right to counsel at the same time as he is advised of his right to make a statement. After all, the question of whether the defendant should make a statement or remain silent may itself require consultation with defence counsel. The right to counsel is independent of the right to silence. The defendant must not be refused the right of access to defence counsel. If the defendant declares he wishes to speak first with defence counsel, the intended questioning must, pursuant to supreme court practice, be postponed in anticipation of the defendant's decision, after consulting defence counsel, as to whether he wishes to defend the case. The defendant shall, in principle, be given the opportunity of speaking to defence counsel by telephone. Questioning may only be continued without defence counsel if the defendant has agreed to this after being advised of his right to counsel and, in principle, even then only if efforts have been made to assist the defendant in making the desired contact with defence counsel.</p> <p>The defendant shall also be advised of his right to silence and right to counsel in connection with his initial questioning by the public prosecution office or by police officers. In the case of questioning by the public prosecution office, this is regulated by Section 163a paragraph 3 sentence 2 in connection with Section 136 paragraph 1 sentence 2 StPO and, in the case of questioning by police officers, by Section 163a paragraph 4 sentence 2 in connection with Section 136 paragraph 1 sentence 2 StPO.</p> <p>If the defendant has been arrested on the grounds of a warrant of arrest, he shall be brought before the competent judge without delay; pursuant to Section 115 paragraph 3 StPO, said judge shall advise the defendant of the incriminating circumstances and his right to reply to the accusations or to remain silent as he chooses. Section 136 paragraph 1 sentence 2 StPO and thereby the reference to the right to counsel also apply in the context of such questioning, where this is the first judicial examination in the case.</p> <p>Pursuant to Section 115a StPO, if he cannot be brought before the</p>

	<p>examining judge responsible for custody decisions no later than the day after his arrest, a defendant who has been apprehended on the grounds of a warrant of arrest shall be brought before the judge of the nearest Local Court without delay, not later than on the day after his apprehension. Pursuant to Section 115a paragraph 2 sentence 2 StPO, the judge of the nearest Local Court shall also apply Section 115 paragraph 3 StPO, if possible, in connection with the questioning, which he shall carry out without delay after production of the defendant and not later than the next day. The reason for this restriction is that, naturally, the judge of the nearest Local Court will usually have only a limited knowledge of the files. Section 136 paragraph 2 StPO and with it the reference to the right to counsel are also applicable in the context of such questioning, where this is the first judicial examination in the case.</p> <p>Pursuant to Section 128 paragraph 1 sentence 2 StPO, a person caught in the act or pursued and then temporarily detained shall also be examined pursuant to Section 115 paragraph 3 StPO if brought before the judge in the Local Court in the district of which he was arrested without delay and not later than the day after his arrest. Section 136 paragraph 1 sentence 2 StPO and with it the reference to the right to counsel also apply in the context of such questioning where this is the first judicial examination in the case.</p> <p>Pursuant to Section 168c paragraph 1 StPO, defence counsel shall in principle be permitted to be present during any judicial examination of the defendant.</p> <p>Pursuant to Section 163a paragraph 3 sentence 2 StPO, the same applies to questioning of the defendant by the public prosecution office, as said provision orders corresponding application of Section 168c paragraph 1 to questioning before the public prosecution office.</p> <p>On the other hand, it is disputable whether defence counsel has a right to be present when the defendant is questioned by the police. The wording of the act partly suggests that this is not the case. Specifically, there is no reference to Section 168c paragraph 1 (and 5) StPO in connection with the regulations governing questioning of the defendant by police officers. However, the police may allow defence counsel to be present when the defendant is questioned.</p> <p>However, pursuant to Section 168c paragraph 5 StPO, in the case of examination of the defendant by the judge or the public prosecution office, defence counsel need not be advised of the date of the examination if doing so might endanger the success of the investigation. The same provision stipulates that defence counsel has no right to postponement of the date of a hearing when prevented from being present. However, these restrictions do not in any way mean that the defendant is obliged to give evidence without his defence counsel present. Rather, notification of the date of examination to the defence counsel should not be given as it is possible that third parties may draw conclusions from this date which could endanger the success of the investigation.</p> <p>To summarise, it may be said that the defendant is under no circumstances obliged to give evidence before the judge, the public prosecution office or the police or other investigating officers if he does not wish to speak at all or in any case not without his defence counsel being present.</p> <p>(b) The defendant has the right to remain silent during any examination. In this respect he may also make his statement dependent on his defence counsel being present throughout the examination. See also the comments re letter (a).</p>
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	(c) Pursuant to the general provisions, a confession made in the absence of defence counsel is fully admissible if it has come about correctly, i.e. in compliance with the statutory provisions governing the examination of defendants, including the statutory duties to advise the defendant of his rights, which covers the right to counsel.
<b>Greece</b>	<p>(a) A suspect has the right to be represented by a lawyer during the criminal proceedings. Access to a lawyer is given at all stages of the criminal procedure. The appointment of a lawyer<sup>102</sup> may be made orally, while some form of written statement is made during the course of the investigation, or in writing. There also exists the possibility of a lawyer being appointed by the court, the judicial council or the investigative authorities, as illustrated above under 2c.</p> <p>(b) The suspect or the accused person has the right to appear with a lawyer or through him in all acts carried out during the investigation, with the exception of the examination of witnesses.</p> <p>(c) A confession made by a suspect or even the accused is usually treated with caution by the courts, since it is not considered in itself and with no identification of its relation to the evidence gathered as a means strong enough to lead to a conviction. In any case, any confession is usually taken into consideration together with the accused person's pleading and rejoinder before the court. That is the reason why during the pre-trial stage the investigating persons that formally question the suspect inform him of his duties, including his right to a lawyer, as soon as a charge is brought against him.</p>
<b>Hungary</b>	<p>(a) If the suspect has a counsel, the counsel has the right to be present and is informed about any hearing/ event / act related to the investigation. If the suspect does not have a counsel of his/her own choice, and legal assistance is compulsory, a counsel has to be appointed by the authorities to help him/her before the first hearing at the latest</p> <p>(b) Yes.</p> <p>(c) The counsel for defence has the right to be present, he or she is always informed beforehand about the hearing. If the counsel is not present after being properly informed about the hearing, and no procedural rules are breached, his/her absence does not influence the evidential value of the confession. Please note that the court has the right and the total freedom to evaluate the evidential value of the confession, including the freedom to ignore the confession if any doubt on its credibility arises.</p>
<b>Ireland</b>	<p>(a) Section 5 of the Criminal Justice Act 1984 provides that the member of the Garda Síochána in charge of a station shall inform a detained person or cause such a person to be informed without delay of their entitlement to consult a solicitor and cause the solicitor to be notified as soon as practicable. In accordance with the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, the information is to be given orally initially and subsequently in writing. It is also the responsibility of the member in charge to explain or cause to be explained that if the arrested person does not exercise this right immediately he will not be precluded from doing so later. If the person arrested is under the age of eighteen years the parent or guardian (or other person reasonably named in their absence) nominated is informed of the arrest, the reason and of the entitlement to consult a solicitor. If the underage person is married their spouse is</p>

<sup>102</sup> Article 96 CCrP.



	<p>notified in lieu of the parent or guardian. (Childcare Act 2001)</p> <p>If the solicitor cannot be contacted within a reasonable time or if the solicitor is unable or unwilling to attend at the station the person is given an opportunity to ask for another solicitor who shall also be notified as soon as practicable. If an individual is not given immediate access to a lawyer when available then s/he would be deemed to be in unlawful custody</p> <p>The Regulations also provide that an arrested person shall have reasonable access to a solicitor of his or her choice and be enabled to communicate with him or her privately. Consultation may take place in the sight but out of the hearing of a member of the Garda Síochána.</p> <p>(b) A suspect is not entitled to have a lawyer present while being questioned.</p> <p>In the case of <u>The People v. Doyle</u> [1977] IR 336 the Court of Criminal Appeal stated that a detained person has a right of reasonable access to his legal advisers and a refusal of a request for reasonable access would render the detention illegal. The High Court subsequently held that this right of access was not effectively given unless he had the opportunity to consult with his legal advisers out of the hearing of the members of the Gardaí (<u>The State v. Commissioner of the Garda Síochána</u>, HC, 14 Dec., 1976).</p> <p>In <u>The People (DPP) v. Healy</u> [1990] 2 IR 73 the Supreme Court held that the right of a detained person to access to legal advice, whether requested by him personally or by another person bona fide acting on his behalf, was derived from, and protected by, the Constitution. The court also stated that the right to reasonable access meant a right to be immediately informed of the solicitor's arrival and to be given immediate access if requested (unless there are valid reasons not to do so). In his judgement Finlay CJ declined to express a view on whether a detained person had a right to have a lawyer present during questioning.</p> <p>In the <u>People (DPP) v. Quilligan (No. 3)</u> [1993] 2 IR 305 affirmed the decision in Healy and stated that a person detained under section 30 of the Offences against the State Act, 1939 enjoyed a number of protections, including that the person detained has, during his detention, a right to legal assistance, and the refusal to grant it to him when reasonably requested can make his detention unlawful.</p> <p>(c) As long as the court is satisfied that a statement is voluntary, subject to the considerations indicated at (b) above in relation to access to a lawyer and the legality of the detention, it can be admitted in evidence whether the suspect had access to a lawyer or not.</p>
Italy	<p>(a) See reply to question 2(b).</p> <p>(b) Yes.</p> <p>(c) Suspects cannot be questioned unless a defence counsel is present; if counsel is not present, any statements made are inadmissible.</p> <p>If a person not under investigation makes a confession in the course of an interview to assist with inquiries, the authority conducting the interview must discontinue it, informing the person that he may be investigated as a result of such statements and inviting him to appoint a lawyer. Such prior statements cannot be used against the person who has made them.</p> <p>In the case of questioning by the criminal police (possible only if the person has not been arrested or apprehended), Article 350 states that the police, before making initial enquiries, must invite the person to nominate a lawyer of their own choice and, failing that, take steps to nominate an officially assigned lawyer. The defence lawyer must be present when questioning takes place.</p>

	<p>Criminal police officers may, at the place or in the immediate circumstances of the crime, even when no lawyer is present, ask the person under investigation, even if arrested in the act or apprehended under Article 384, for information and any details useful for the immediate prosecution of the investigation, but it is prohibited to record such details and information or to use them in proceedings.</p> <p>The criminal police may also receive unsolicited confessions, even when no lawyer is present, but these are not admissible in proceedings, except where they are contested during a hearing.</p>
<b>Latvia</b>	<p>(a) Defender (in Latvia sworn solicitor) has right to participate in proceedings from the moment, when a person is acknowledged a suspect, i.e. a person apprehended in order of criminal procedural detention (Criminal Procedural Code p.120), or it was applied to him any safety measure ahead of charging (CPC p.70).</p> <p>A sole solicitor cannot be defender of two or more suspects, if their defence interests do not coincide.</p> <p>The suspect is to be examined within 24 hours from the detention moment or, if the suspect was not apprehended, from the moment the safety measure was applied ahead of he was charged. If the defender invited by the suspect can not arrive within 24 hours, the pre-investigator or prosecutor can advise the suspect to invite another lawyer or have to secure the lawyer to the suspect by themselves. There does exist in Latvia an institution of lawyers on duty and in case of necessity the procedural guide can invite such solicitor for defence, when the suspect is not able to choose defender for himself, but asks the solicitor to be present, for example in examination.</p> <p>(b) The suspect is granted with right for defence, i.e. to call a solicitor from the detention moment. The defender from the moment he is engaged in the matter is granted with rights:</p> <ul style="list-style-type: none"> <li>• To meet the suspect solely without any restrictions on the number and duration of meetings,</li> <li>• Present evidencies (proofs),</li> <li>• Handle rejections and applications,</li> <li>• <u>Participate in questioning of the suspect,</u></li> <li>• Participate in the charging and questioning of the chargeable,</li> <li>• Participate in the process of applying of safety measure imprisonment/home arrest to the defendable and in case of necessity, acknowledged by judge, in prolongation of terms of safety measures,</li> <li>• Take participation in investigation activities (testing of evidencies at the place, confrontation, identification etc.) on the request of the suspect or his own request,</li> <li>• Handle complaints on actions and decisions of pre-investigator, pre-investigation institution, prosecutor and the court.</li> </ul> <p>In interests of the proceedings as well as considering legal interests of the suspect, in some categories of criminal cases there is provided for in p.98 of Latvian CPC an obligatory defence, which is a responsibility of a procedural advancer in criminal proceedings to look to that these persons will be secured with a defender. The obligatory defence cases are:</p> <ul style="list-style-type: none"> <li>• Cases on juvenile offenders;</li> <li>• Cases on dumb, deaf, blind and other persons, who due to their physical or mental deficiency are not able to exercise their right for defence by themselves;</li> <li>• Cases on persons, who do not know the language in which criminal</li> </ul>

	<p>proceedings are being held;</p> <ul style="list-style-type: none"> <li>• Cases on crimes could be sentenced with death penalty. In obligatory defence cases, when the suspect himself or another person on behalf of him have not chosen the lawyer, this might be done by the pre-investigator, prosecutor or the court.</li> </ul> <p>The obligatory participation of the defender in criminal proceedings does not deprive the suspect of the right to deny from the lawyer. Such a denial is allowed only on the initiative of the suspect himself, on his free agency. Denying defence, the suspect does not forfeit the right for defence repeatedly, if he is appealing for the defence the appeal is to be satisfied.</p> <p>The denial of the defender does not bound the pre-investigator, prosecutor or court, if the denial is made by the juvenile or the suspect, for his physical or mental deficiencies, being not able to use his right for defence.</p> <p>(c) In accordance with p.51 of Latvian CPC the court, judge, prosecutor and pre-investigator estimate the evidencies, including the testimonies of the suspect to one's internal belief, which grounds on omnilateral, full and objective consideration of all circumstances in its entity after the law and legal sense. No proof has a preliminary determined force, which can bound the court, judge, prosecutor or pre-investigator.</p> <p>Hence, the testimony of the suspect, given in absence of the solicitor, is to be estimated to the internal belief in connection with other criminal case proofs and independently from they were given in presence of the solicitor or not, the testimonies have no preliminary determined superior force in relation to other proofs of the case.</p>
<b>Lithuania</b>	<p>a) The suspect is deemed to be person detained on suspicion of having committed a crime a person questioned about a crime which he is suspect of having committed, or a person summoned for questioning to whom a notification of suspicion as referred to in Article 187 of the Code of Criminal Procedure has been issued. The suspect is entitled to have a defence lawyer from the time of detention or initial questioning (Article 21 of the Code of Criminal Procedure).</p> <p>Any person suspected or accused of having committed a criminal offence may defend himself or be defended by an appointed defence lawyer, and if he does not have sufficient funds to pay the defence lawyer, he may obtain legal aid free of charge in accordance with the procedure laid down by the Law on state-guaranteed legal aid (Article 44 of the Code of Criminal Procedure).</p> <p>The defence lawyer is entitled to meet with the detained or arrested person in private. The number and duration of such meetings is unlimited (Article 48 of the Code of Criminal Procedure).</p> <p>b) Article 21 of the Code of Criminal Procedure states that the suspect is entitled to have a defence lawyer from the time of detention or initial questioning, and Article 48 of the same Code states that the defence lawyer is entitled to attend the questioning of the suspect and may not refuse to defend the suspect. This means that the defence lawyer need not attend the questioning, but may not refuse to attend if the suspect has requested his presence. In practice, the defence lawyer must attend the questioning whenever the suspect so requests. If he does not attend, the questioning will not take place because if the questioning takes place without the defence lawyer when his presence has been requested by the suspect, this might be deemed to constitute an essential restriction or violation of the suspect's right to a defence.</p>

	<p>c) A confession by the suspect, provided he does not subsequently dispute it, has the same significance irrespective of whether or not the defence lawyer is present when he makes it. If a suspect confesses in the absence of a defence lawyer and subsequently disputes his confession, it may be used as evidence.</p> <p>Whether a confession is admissible as evidence is determined in each case by the judge of the court to which the case is referred. (Article 20 of the Code of Criminal Procedure).</p>
<b>Luxembourg</b>	<p>a) En cas de flagrant délit ou crime, dès la rétention du suspect par les officiers de police judiciaire et avant de procéder à son interrogatoire, avis est donné à la personne interrogée de son droit de se faire assister par un conseil à choisir parmi les avocats et avocats à la cour du tableau des avocats .Cet avis lui sera donné par écrit, contre récépissé et dans une langue qu'elle comprend, sauf impossibilité matérielle constatée (art 39 du code d'instruction criminelle).</p> <p>D'après l'article 81 du code d'instruction criminelle le juge d'instruction, avant de procéder à l'interrogatoire, donne avis à l'inculpé de son droit de choisir un avocat. A défaut de choix, il lui en désigne un d'office, si l'inculpé le demande. L'inculpé peut choisir un avocat inscrit sur la liste ou admis au stage ou bien un avocat habilité à exercer ses fonctions dans un autre Etat membre des communautés européennes sous certaines conditions. La désignation d'un conseil est toujours de droit lorsque l'inculpé est âgé de moins de 18 ans.</p> <p>b) Oui. Détenu ou libre, l'inculpé ne peut être interrogé qu'en présence de son conseil, ou celui-ci dûment appelé, sauf s'il y renonce expressément. Les conseils de l'inculpé et de la partie civile sont convoqués par lettre au moins 24 heures à l'avance.</p> <p>Néanmoins le juge d'instruction peut procéder à un interrogatoire immédiat et à des confrontations si l'urgence résulte, soit de l'état d'un témoin en danger de mort, soit de l'existence d'indices sur le point de disparaître, ou encore lorsqu'il s'est rendu sur les lieux en cas de flagrant crime ou délit. Cependant le procès-verbal doit faire mention des causes d'urgence.</p> <p>Toutes ces dispositions sont à observer à peine de nullité.</p> <p>c) L'aveu de l'inculpé ne dispense pas le juge d'instruction de rechercher d'autres éléments de preuve (art. 51).</p> <p>Les juges du fond apprécient souverainement la valeur d'un élément de preuve constitué par un aveu du prévenu au cours de l'enquête préliminaire, ainsi que la rétractation qui a été faite au cours de l'instruction.</p>
<b>Malta</b>	<p>(a) After 48 hours from arrest.</p> <p>(b) It is intended to eventually grant this right.</p> <p>(c) Full if voluntary.</p>
<b>The Netherlands</b>	<p>A suspect is in the Dutch legislation not obliged to have a lawyer but has always and at anytime the right to choose a lawyer (article 38). If the suspect does not choose a lawyer, he will get one assigned. The assignation of a lawyer finds place as soon as a suspect is taken in to custody (article 41).</p> <p>As soon as a suspect is taken in custody, he has the right to have a lawyer present throughout the questioning (article 57). The suspect does not have the right to have a lawyer present during the interrogation of the police.</p> <p>In principle a confession made by a suspect in the absence of his lawyer may be considered by the judge as lawful evidence (article 339 and 341). If there has been gross negligence, it is possible that the confession will not be used as evidence or there can be a reason to use one of the</p>

	sanctions from article 359a (see question 9).
<b>Poland</b>	<p>(a) The arrested person, upon his demand, shall be given the opportunity to contact a lawyer by any means available as well as to talk directly with the latter. A suspect should be informed about this right immediately after detention, yet before the first questioning. The person who made the arrest may reserve the right to be present when such a conversation takes place. (art. 245 of the Code of Criminal Procedure).</p> <p>Prior to first examination, a suspect shall be advised of his rights: to give or refuse to provide explanations, or to answer questions, to submit motions for actions in inquiry or investigation, to use the assistance of a defence counsel, to acquaint himself finally with the materials of the proceedings, as well as of the right to be examined in the presence of a retained counsel and on the duties and obligations specified. These instructions shall be given to the suspect in writing; the suspect should confirm receipt of the instructions with his signature. (art. 300 of the code of Criminal Procedure).</p> <p>The appointment of the lawyer is done by the choice of the suspect or ex officio by the Chief Justice of the court - see point 2 c.</p> <p>(b) The lawyer appointed either by the suspect or ex officio is entitled to act in the whole proceedings, including those actions after the judgement is final unless the appointment is limited to some actions only (e.g. appointment only for preparatory proceedings or for participation in the hearing connected with preliminary detention). The lawyer may be present during all the actions conducted under the other party's presence and shall be informed about them (art. 84). If the lawyer is duly notified of the date and place of the action, his absence does not hamper the action to be carried out.</p> <p>(c) Confession made by a suspect in the absence of the lawyer have an evidential value and are subject to examination by the court.</p>
<b>Portugal</b>	<p>Under Article 32 of the Portuguese Constitution, the detainee has the right to choose a defence lawyer and to be assisted by him at all stages of the proceedings. The lawyer must specify the law, the cases, and the stages at which assistance from a lawyer is obligatory.</p> <p>In accordance with Portuguese law (Article 68 of the Portuguese Criminal Code) a person becomes a detainee or defendant as soon as:</p> <ul style="list-style-type: none"> <li>there is an enquiry into a specific person and that person makes statements before any judicial authority or organ of the criminal police;</li> <li>a measure of coercion or bail is applied to any person;</li> <li>a suspect is detained in the act of committing an offence or having just committed an offence;</li> <li>an order is pronounced stating that a person is the agent of a crime and that has been communicated to him.</li> </ul> <p>From the moment a person becomes a detainee or defendant, he must be able to exercise his rights and Court duties must be respected (Article 60 of the Portuguese Criminal Code). At any stage of the proceedings, save exceptions provided for by law, he will enjoy the following rights (Article 61 Portuguese Criminal Code):</p> <ul style="list-style-type: none"> <li>to be present at Court proceedings which directly involve him;</li> <li>to be heard by the Court or by the examining judge whenever they must take any decision that personally affects him;</li> <li>not to answer questions put to him, by any entity, on facts that he is accused of, and on the content of statements that he has made about them;</li> <li>to choose a defence lawyer or to request that the Court appoint him one;</li> <li>to be assisted by a defence lawyer in all proceedings in which he takes</li> </ul>

	<p>part, and when detained, to communicate with him, even in private; to intervene in the enquiry and in the trial, offering proof and demanding the evidence that he considers necessary; to be informed, by the judicial authority, or before the police body before which he is obliged to appear, of the rights that assist him; to appeal, under the terms of the law, decisions that may be unfavourable for him.</p> <p>(b) As mentioned in the previous point, the detainee or defendant has the right to be assisted by a defence lawyer throughout the proceedings in which he is involved.</p> <p>The presence of a defence lawyer is obligatory in the following cases (article 64 Portuguese Criminal Code): in the first judicial interview with the accused; in the examining debate and hearing; in any proceedings whenever the accused is deaf, mute, illiterate, not knowing the Portuguese language, less than 21 years of age, or if there is a doubt over his guilt or diminished responsibility; in ordinary or extraordinary appeals; in the case of statements for future records; in the case of a judgment hearing in the absence of the accused; other cases provided for by the law.</p> <p>(c) In cases in which the law demands the respective appearance of the accused or his defence lawyer, and they are absent, the proceedings, whatever their stage, must be officially declared absolutely null (line c) of Article 110 of the Portuguese Criminal Code).</p>
<b>Slovak Republic</b>	<p>Anything that may contribute to properly clarifying the case and that has been obtained in a lawful manner can be used as evidence (see also No. 5).</p>
<b>Spain</b>	<p>(a) Once an individual is detained or charged with a crime he has the right to access to a lawyer, either freely chosen by the detainee or allocated automatically (free legal aid). The time limit, as indicated earlier, is eight hours from the time the Police communicate the detention to the Bar Association.</p> <p>(b) Under the Spanish legal system a suspect cannot refuse the assistance of a lawyer. His presence during questioning is therefore obligatory.</p> <p>(c) A confession from the suspect, in the absence of his lawyer, would be null and void as it violates a fundamental right recognised by the Constitution, as indicated above.</p>
<b>Sweden</b>	<p>(a) If a suspect under arrest or detained so requests, a public defence counsel shall be appointed for him (to be arrested or detained the crime itself does not have to be very serious). A public defence counsel shall also be appointed upon request for a person who is suspected of a offence in respect of which a less severe sentence than six months imprisonment is not prescribed. A public defence counsel shall also be appointed</p> <ol style="list-style-type: none"> <li>1. <u>if</u> a defence counsel is needed by the suspect in connection with the inquiry into the offence,</li> <li>2. <u>if</u> a defence counsel is needed in view of doubt concerning which sanction shall be chosen and there is reason to impose a sentence for a sanction other than a fine or conditional sentence or such sanctions linked together, or</li> <li>3. <u>if</u> there are otherwise special reasons relating to the personal circumstances of the suspect or the subject of the case.</li> </ol> <p>A suspect has a right to a public defence counsel, at the latest, when the suspect formally is notified of the suspicion. A suspect can, however, at any stage of the proceeding appoint a private lawyer.</p>

	<p>(b) Yes. The defence counsel is always entitled to attend an interview which takes place following a request made by a suspect himself, provided the suspect is formally notified of the suspicion. The defence counsel may also attend other interviews if his or her presence will not harm the investigation (such an assessment is most unusual).</p> <p>(c) One of the fundamental principles of Swedish judicial procedure is that evidence may be freely submitted by the parties to the case and that the evidence is evaluated by the court in accordance with the principle of free evaluation of evidence, developed in Swedish law during the 20th century. This means that a confession made by a suspect in the absence of his or her lawyer, will be evaluated by the court in the light of all relevant circumstances of the case.</p>
<b>United Kingdom</b>	<p><u>England &amp; Wales</u></p> <p>(a) Under PACE Code of Practice, a person in police custody is entitled, at any time, to consult and communicate privately, whether in person, in writing or by telephone with a solicitor. Independent legal advice is available free of charge from the duty solicitor. Whenever legal advice is requested the custody officer must act without delay to secure the provision of such advice to the person concerned.</p> <p>Access to legal advice may be delayed only if the person is in police detention in connection with a serious arrestable offence, has not been charged with an offence and an officer of the rank of superintendent or above has reasonable grounds for believing that the exercise of the right:</p> <ul style="list-style-type: none"> <li>(i) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other people; or</li> <li>(ii) will lead to the alerting of other people suspected of having committed such an offence but not yet arrested for it; or</li> <li>(iii) will hinder the recovery of property obtained as a result of such an offence.</li> </ul> <p>Access may also be delayed where the serious arrestable offence is either:</p> <ul style="list-style-type: none"> <li>(i) a drug trafficking offence and the officer has reasonable grounds for believing that the detained person has benefited from drug trafficking, and that the recovery of the value of that person's proceeds or drug trafficking will be hindered by the exercise of either right or;</li> <li>(ii) an offence to which Part VI of the Criminal Justice Act 1988 (covering confiscation orders) applies and the officer has reasonable grounds for believing that the detained person has benefited from the offence, and that the recovery of the value of the property obtained by that person from or in connection with the offence, or if the pecuniary advantage derived from him or in connection with it, will be hindered by access to legal advice.</li> </ul> <p>Access to legal advice may be delayed only for as long as is necessary and in no case beyond 36 hours of the person arriving at the police station or the person being arrested, whichever is the earlier.</p> <p>(b) Where a person has been permitted to consult a solicitor and the solicitor is available (i.e. present at the station or on his way to the station or easily contactable by telephone) at the time the interview begins or is in progress, the solicitor must be present while he is interviewed.</p> <p>A person who wants legal advice may not be interviewed or continue to be interviewed until he has received it unless:</p> <ul style="list-style-type: none"> <li>(a) Circumstances described in (b) above apply; or</li> <li>(b) an officer of the rank of superintendent or above has reasonable grounds for believing that: <ul style="list-style-type: none"> <li>(i) delay will involve an immediate risk of harm to persons or</li> </ul> </li> </ul>

	<p>serious loss of, or damage to property; or</p> <p>(ii) where a solicitor, including a duty solicitor, has been contacted and has agreed to attend, awaiting his arrival would cause unreasonable delay to the process of investigation; or</p> <p>(c) the solicitor nominated by the person, or selected by him from a list:</p> <p>(i) cannot be contacted; or</p> <p>(ii) has previously indicated that he does not wish to be contacted; or</p> <p>(iii) having been contacted, has declined to attend;</p> <p>and the person has declined to ask for the duty solicitor, or the duty solicitor is unavailable; or</p> <p>(d) the person who wanted legal advice changes his mind.</p> <p>(c) See answer to 7a)</p> <p><u>Scotland</u></p> <p>(a) Where a person is a potential suspect there are three stages, though not all these stages need necessarily be followed in every case. These stages are:</p> <p>Voluntary Interview: the interviewee is under no legal compulsion to remain with the police.</p> <p>Detention: a person can be detained for up to 6 hours by the police if they are suspected of an having committed a criminal offence. Normally they will have the right to inform a solicitor and a friend or relative of their detention. (This might not be done immediately if, for example, the police suspect the friend was also involved in the crime).</p> <p>Arrest/Charge: a person who is arrested will be cautioned and will be formally charged as soon as practicable. Again, he has the right to have a lawyer and someone else notified (with the same qualification). The person may then be released or detained. If they are detained, they should be brought into court on the next day it sits after the day of the arrest. An arrested person has a right to see a lawyer before appearing in court but this may not take place until after the conclusion of the police interview.</p> <p>(b) No. However where any person has been arrested on any criminal charge, such person shall be entitled, immediately upon such arrest, to have intimation sent to a solicitor that his professional assistance is required by such person, and the accused and the solicitor shall be entitled to have a private interview before appearance in court. The solicitor must be informed of the place of detention, whether the person is to be liberated, and the date and place of any court appearance.</p> <p>(c) Whether a lawyer is present or absent is not the central criterion for admissibility in evidence of a confession. The test is whether the confession was voluntarily made and fairly obtained in all the circumstances. This covers both procedural aspects and any inherent vulnerability of the suspect. Unduly aggressive questioning designed simply to “break” a suspect, tricks and inducements are all liable to render a confession inadmissible. Once the person being questioned has become a firm suspect, he should be cautioned ie informed that he does not have to say anything, and that anything he does say may be used in evidence. Failure to do so may render any subsequent statement inadmissible. Once a suspect is charged, further police questioning is not normally permissible, although a spontaneous statement might still be admitted in evidence.</p>
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<b>Question 5</b>	<p><b>5) Detention and questioning</b></p> <p>(a) <b>How long may a suspect be detained without charge?</b></p> <p>(b) <b>Is the interview tape- or video- recorded? If so, how many copies are made and who is entitled to receive one?</b></p> <p>(c) <b>Who is authorised to decide whether or not the suspect will be granted or refused bail (provisional liberty)? (This question applies to the initial bail decision taken once the suspect has been charged at the police station. Subsequent applications to court for bail and to vary bail conditions will form the subject of a separate study and are not relevant here.)</b></p>
<b>Austria</b>	<p>(a) Once again it must be pointed out that the stage in the proceedings described by the English word “charge” does not exist in Austrian law. In accordance with Austria’s Code of Criminal Procedure, the charge is not brought until the end of the investigation proceedings, and thus usually only after a defendant has been detained. The police may only hold a detained suspect for a period of <u>48 hours</u> after detention. During that period the defendant must be brought before a court (legal institution).</p> <p>(b) Neither the questioning of the defendant by the police or local constabulary nor by the examining judge is tape- or video-recorded. A written record is kept of the questioning which must be signed by the defendant (§ 101 Code of Criminal Procedure).</p> <p>(c) In Austria the decision on whether a defendant will be released on bail rests with the examining judge. It is made after the defendant has been brought before the court (by the police). There are other constraints, such as the temporary removal of travel documents or a driving licence, which may in some circumstances be taken when the defendant is still in police custody. Otherwise the defendant must be brought before a court at the latest within 48 hours of detention.</p>
<b>Belgium</b>	<p>a) En vertu de l’article 12, alinéa 3 de la Constitution, nul ne peut être privé de sa liberté pour une durée de plus de vingt-quatre heures sans décision d’un juge. Dès que la personne interrogée est privée de sa liberté d’aller et de venir, le délai prend cours. La personne dont le juge ordonne la détention est inculpée.</p> <p>b) Oui, c’est une possibilité. Les articles 92 et suivants du Code d’instruction criminelle, introduits par la loi du 28 novembre 2000, prévoient la possibilité pour le procureur du Roi ou le juge d’instruction d’ordonner l’enregistrement audiovisuel de l’audition de mineurs victimes ou témoins d’infractions sexuelles au sens large ou de maltraitance, ou, en cas de circonstances graves et exceptionnelles, d’autres infractions. La loi précitée a ainsi donné une base légale à une pratique existante, développée sur base d’expériences pilotes. En présence d’adultes victimes ou témoins d’infractions graves, dans des circonstances exceptionnelles (par ex une victime vulnérable), le procureur du Roi ou le juge d’instruction sont libres d’ordonner l’enregistrement de l’audition. L’article 97 du même Code prévoit que l’enregistrement est réalisé en deux exemplaires qui ont le statut d’originaux. Aucune copie ne peut être réalisée. Toutes les parties ont le droit de visionner la cassette, ainsi que les personnes qui participent professionnellement à l’information, à l’instruction ou au jugement dans le cadre du dossier judiciaire. (art.99)</p> <p>c) L’article 35 de la loi du 20 juillet 1990 relative à la détention préventive prévoit que c’est le juge d’instruction (dans les cinq premiers jours de la détention) et la chambre du conseil (par la suite et jusqu’à la</p>

	saisine du juge du fond) qui sont habilités à décider de la (re)mise en liberté sous caution ou sous conditions d'un inculpé, à la demande de ce dernier, du ministère public ou d'office.
<b>Cyprus</b>	<p>(a) It is a notion protected by the Constitution and the European Convention of Human Rights (ECHR) that all the relevant procedures regarding a person arrested shall take place promptly and without any unreasonable delay. Otherwise the constitutionally protected human right of human freedom would be violated. Thus, in Article 11(6) of the Cyprus Constitution, it is provided that 'the Judge before whom the person arrested is brought, shall promptly proceed to inquire into the grounds of the arrest in language understandable by the person arrested and shall, as soon as possible and in any event not later than three days from such appearance, either release the person arrested on such terms as he may deem fit or, where the instigation into the commission of the offence for which he has been arrested has not been completed, remand him in custody and may remand him in custody from time to time for a period not exceeding eight days at any one time, but in any case that the total period of such remand in custody shall not exceed three months of the date of the arrest of expiration of which every person or authority having the custody of the person shall forthwith set him free.' The treatment of a person detained without a charge has also been described in question 3 above, regarding article 17 of Cap.155.</p> <p>(b) The interview of the suspect is written down by a police officer and the suspect (or his lawyer) is entitled to receive a copy of it. The Police authorities which are examining the case shall keep the original document, which (or a copy of it) shall be submitted to the Court for the purposes of the trial.</p> <p>(c) The Judge is authorised to decide whether or not the suspect will be granted or refused bail.</p>
<b>Czech Republic</b>	<p><b>i) Does your country recognize a right for anyone to apprehend a person observed in the act of committing an offence (in flagrante delicto) or fleeing from it?</b>  Yes, our national law recognizes this right. Everybody may limit personal freedom of a person observed in the act of committing an offence or fleeing from it. However, the apprehended person must be without any delay handed over to the police.</p> <p><b>ii) If this is the case, which is the time limit for turning over such a person to the competent authorities?</b>  There isn't any precise time limit for turning over such a person to the competent authorities. The Criminal Proceedings Code states that such a person should be turned over to the competent authority as soon as possible. If it is not possible, then the apprehension should be announced to the competent authorities as soon as possible.  If the state attorney has been turned over an apprehended person and if he/she has not released such person, he/she will turn over this person to the court within 48 hours after the apprehension, at the latest, together with a suggestion for punishment. He/she will otherwise decide on initiation of the criminal prosecution, and submit to the court a proposal for the decision on the defendant's custody. The judge to whom the apprehended person has been turned over is obliged to interrogate him/her and decide whether he/she should be released or taken into custody 24 hours after the delivery of the prosecutor's suggestion to impose the custody at latest.</p> <p><b>iii) Which authorities/officials may take the initial decision on arrest/apprehension?</b></p>

	<p>This issue is provided for by sections 75 and 76 of the Criminal Proceedings Code. This decision is taken by the police in cooperation with prosecutor who must be informed about all steps concerning the apprehension undertaken by police and who is obliged to decide about following procedures. The prosecutor gives prior consent to the apprehension; however, on exceptional conditions the apprehension may be conducted without this approval.</p> <p><b>iv) Which is the time limit for contacting the prosecutor/other legal authority/court after the initial decision on arrest/apprehension?</b> See the previous answers.</p> <p>(a) How long may a suspect be detained without charge? A person arrested by police must be turned over to the court 48 hours after his/ her arrest at latest if it is decided that he/she should not be released and the prosecutor suggests taking him/her into custody. The judge to whom the arrested person has been turned over is obliged to interrogate him/her and decide whether he/she should be released or taken into custody 24 hours after the delivery of the prosecutor's suggestion to impose the custody at latest.</p> <p>(b) Is the interview tape- or video- recorded? If so, how many copies are made and who is entitled to receive one?</p> <p>Generally said, each act of the criminal proceedings is recorded in writing, at the time of the act itself or immediately afterwards. However, the Criminal Proceedings Act additionally provides for the application of special tools for recording. Therefore, act of the criminal proceedings (thus even interrogation) is allowed to be audio or video recorded. If the audio or video record has been made of the act, such circumstance are noted in the record made of the act, which includes, in addition to the information of the time, location, and method of performance, the information of the means used. The technical carrier of the record is attached to the file, or the file refers to where the technical carrier is kept. The record of each act of the criminal proceedings is part of a file and persons entitled to it are allowed to look into the file and get acquainted with the information therein contained (with specific exemptions, i.e. if measures have been taken up to conceal and make secret the identity and the face of the witness).</p> <p>(c) Who is authorised to decide whether or not the suspect will be granted or refused bail (provisional liberty)? (This question applies to the initial bail decision taken once the suspect has been charged at the police station. Subsequent applications to court for bail and to vary bail conditions will form the subject of a separate study and are not relevant here.)</p> <p><u>The decisions before the suspect is taken into custody</u> The decision on taking into custody is taken by the court; in the pre-trial stage the court decides on the suggestion of the prosecutor. The court taking decision on the custody may decide to leave the defendant free if he furnishes a bail in the amount determined by this court.</p> <p><u>The decisions after the suspect has been taken into custody</u> Concerning the release from the custody on bail during the pre-trial stage, the prosecutor takes such decision.</p>
<b>Denmark</b>	<p>(a) A person can be arrested if there are reasonable grounds to suspect the person of a crime. In these cases a charge can also be made. According to AJA, section 758 (2) the arrested shall be informed of the charge as soon as possible. If the arrested is not released, the person shall be brought</p>

	<p>before the court as soon as possible, and at the latest within 24 hours from the arrest, cf. AJA, section 760 and the Constitution, section 71 (3). At this court meeting it can be decided to place the arrested under pre-trial detention. The arrested has a right to be assisted by a lawyer at this court meeting.</p> <p>(b) Interviews are generally not tape- or video recorded, but the material content of interview shall be included in the police reports, which the person interviewed, shall have a chance to read afterwards and sign if agreeing upon the content. Copies of all the case material are made for the judge, the defence counsel and the prosecutor.</p> <p>(c) The initial decision of whether to arrest a suspect is made by the police. The decision to prolong the arrest for more than 24 hours or to order pre-trial detention is made by the court, see above. At the first court meeting the accused can be granted provisional liberty on conditions set out in AJA section 765(2). The conditions can relate to supervision, treatment or in certain cases economical deposit (≈bail).</p>
<b>Estonia</b>	<p>Code of Criminal Procedure:</p> <p><b>§ 108<sup>1</sup>. Detention of suspect</b></p> <p>(1) The detention of a suspect is a procedural act whereby a person is deprived of liberty for up to forty-eight hours, and concerning which minutes of detention shall be prepared.</p> <p>(2) A person shall be detained as a suspect if:</p> <ol style="list-style-type: none"> <li>1) he or she is apprehended in the act of commission of a criminal offence or directly thereafter;</li> <li>2) an eyewitness to a criminal offence or a victim indicates such person as the person who committed the criminal offence;</li> <li>3) the evidentiary traces of a criminal offence refer to him or her as the person who committed the criminal offence.</li> </ol> <p>(3) A suspect may be detained on the basis of other information referring to a criminal offence, if:</p> <ol style="list-style-type: none"> <li>1) he or she attempts to escape;</li> <li>2) he or she has not been identified;</li> <li>3) he or she may continue to commit criminal offences;</li> <li>4) he or she may abscond the criminal proceedings or impede the criminal proceedings in any other manner.</li> </ol> <p>(4) Persons who are apprehended in the act of commission of a criminal offence or directly thereafter in the act of attempting to escape may be immediately conveyed to the police for detention as a suspect by everyone.</p> <p>(5) A detained suspect has the right to file a complaint against the activities of a preliminary investigator, to give explanations and to submit applications. The suspect is given an opportunity to notify at least one person close to him or her at his or her choice of his or her detention through a preliminary investigator.</p>

	<p>(6) A preliminary investigator is required to prepare minutes concerning the detention of a person suspected of commission of a criminal offence, indicating the grounds and motives for detention, and to notify a prosecutor of the detention within twenty-four hours. The content of the minutes and the rights and obligations referred to in subsection 35<sup>1</sup> (1) of this Code shall be communicated to the detained person against a signature.</p> <p>(7) A suspect shall be interrogated not later than within twenty-four hours after his or her detention pursuant to the rules prescribed by this Code for the interrogation of an accused.</p> <p>(8) If the basis for the detention of a suspect ceases to exist in the pre-trial proceedings, the suspect shall be promptly released.</p> <p>(a) How long may a suspect be detained without charge? 48 hours</p> <p>(b) Is the interview tape- or video- recorded? If so, how many copies are made and who is entitled to receive one?</p> <p>Not regularly. There are no common standards about the number of copies of the interview recordings and who is entitled to receive it.</p> <p><b>§ 108<sup>2</sup>. Minutes of detention of suspect</b></p> <p>(1) The minutes of detention of a suspect shall set out:</p> <ol style="list-style-type: none"> <li>1) the official title, given name and surname of the person who prepared the minutes;</li> <li>2) the time and place of preparation thereof;</li> <li>3) the given name and surname of the detained suspect;</li> <li>4) the basis for detention with a reference to subsections 108<sup>1</sup> (2) or (3) of this Code;</li> <li>5) the time of detention;</li> <li>6) the criminal offence for the commission of which the suspect is detained;</li> <li>7) the explanation of the rights and obligations provided for in subsection 35<sup>1</sup> (1) of this Code to the suspect;</li> <li>8) the objects confiscated from the suspect upon detention, and the characteristics thereof;</li> <li>9) the petitions and applications of the detained person.</li> </ol> <p>(2) The minutes of detention of a suspect shall be promptly sent to a prosecutor.</p> <p>(c) Who is authorised to decide whether or not the suspect will be granted or refused bail (provisional liberty)? (This question applies to the initial bail decision taken once the suspect has been charged at the police station. Subsequent applications to court for bail and to vary bail conditions will form the subject of</p>
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	<p>a separate study and are not relevant here.)</p> <p><b>§ 71<sup>1</sup>. Security</b></p> <p>(1) On the application of a suspect, accused or accused at trial, a county or city court judge may substitute taking into custody as a preventive measure with a security. The minimum rate for a security is an amount equivalent to five hundred minimum daily rates. A county or city court judge shall notify a preliminary investigator, criminal defence counsel and prosecutor of the application for security beforehand; the preliminary investigator, criminal defence counsel and prosecutor have the right to participate in the hearing of the application by the county or city court judge.</p> <p><b>§ 69. Signed undertaking not to leave place of residence</b></p> <p>(1) A signed undertaking not to leave a place of residence means a written commitment obtained from a suspect, accused or accused at trial not to leave his or her permanent or temporary residence without the permission of a preliminary investigator, prosecutor or court.</p> <p>These are the two most common exceptions from the taking into custody as a preventive measure. Bail or security is implemented only by the court and other authorities have no initiative role in it. Addition: Could you elaborate on who may initially arrest a suspect and which time limits must be observed, i.e.:</p> <p><b>i) Does your country recognize a right for anyone to apprehend a person observed in the act of committing an offence (in flagrante delicto) or fleeing from it?</b></p> <p>Yes, the Code of Criminal Procedure recognises the above-mentioned right. Persons who are apprehended in the act of commission of a criminal offence or directly thereafter in the act of attempting to escape may be immediately conveyed to the police for detention as a suspect by everyone.</p> <p><b>ii) If this is the case, which is the time limit for turning over such a person to the competent authorities?</b></p> <p>The person must be turned over to the competent authorities immediately.</p> <p><b>iii) Which authorities/officials may take the initial decision on arrest/apprehension?</b></p> <p>Police and other investigative authorities.</p> <p><b>iv) Which is the time limit for contacting the prosecutor/other legal authority/court after the initial decision on arrest/apprehension?</b></p> <p>The minutes of detention of a suspect shall be promptly sent to a prosecutor. The time limit for the person brought before the court is 48 hours in case of the detention of the suspect. After 48 hours the person must be released if there is no court warrant.</p>
<b>Finland</b>	<p>(a) When a person is apprehended, he must be arrested and the reason for the arrest must be told within 24 hours of the apprehension. The demand to the court for detention of the suspect must be presented as soon as possible and at the latest before 12 o'clock noon on the third day after the day of apprehension. When deciding on the detention, the court sets a dead line for the charge and if the time is longer than 2 weeks, the court will reconsider the detention every 2 weeks. If needed, the prosecutor can ask for continuance.</p> <p>(b) Interview is being taped and sometimes, especially with children,</p>

	<p>videotaped. Tape is being written into a transcript that the suspect reads and verifies its authenticity with his signature. Unlimited number of copies, parties involved can get copies.</p> <p>(c) Finland does not have a bail system.</p>
<b>France</b>	<p>(a) Avant de faire l'objet de poursuites pénales devant un tribunal ou d'être mis en examen devant une juridiction d'instruction, une personne peut faire l'objet d'une mesure de retenue ou garde à vue dans les conditions suivantes :</p> <p>* s'agissant des personnes mineures, les règles ont été rappelées au premier point;</p> <p>* s'agissant des personnes majeures, elles peuvent faire l'objet d'une mesure de garde à vue d'une durée de 24 heures, renouvelable pour une nouvelle durée de 24 heures sur décision du magistrat -procureur de la République ou juge d'instruction- sans que la présentation devant ce magistrat ne soit obligatoire (art. 63 pour l'enquête de flagrance et 77 pour l'enquête préliminaire).</p> <p>Il existe toutefois des régimes particuliers. En effet, en matière de terrorisme (art. 706-23 du CPP) de trafic de stupéfiants (art.706-29 du CPP), la personne peut faire l'objet d'une garde à vue d'une durée de 48 heures dans les conditions décrites ci-dessus. Après cette période de 48 heures, cette garde à vue pourra être prolongée pour une nouvelle durée de 48 heures par le président du tribunal ou le juge de la liberté et de la détention (la personne gardée à vue devra alors être présentée devant ce magistrat).</p> <p>(b) L'enregistrement de l'interrogatoire d'un suspect n'existe que pour les suspects mineurs.</p> <p>Depuis la loi n°2000-516 du 15 juin 2000, les interrogatoires des mineurs placés en garde à vue font l'objet d'un enregistrement audiovisuel. L'enregistrement original est placé sous scellés et sa copie est versée au dossier. Par ailleurs, l'enregistrement ne peut être visionné qu'avant l'audience de jugement, en cas de contestation du contenu du procès-verbal d'interrogatoire, sur décision, selon le cas, du juge d'instruction ou du juge des enfants saisi par l'une des parties.</p> <p>(c) Il n'existe pas en droit français d'"<i>inculpation du suspect dans les locaux de la police</i>".</p> <p>De manière générale, à l'issue d'une mesure de garde à vue, les hypothèses suivantes peuvent se présenter, <u>sur instructions du procureur de la République</u>:</p> <ol style="list-style-type: none"> <li>1. la personne est remise en liberté, soit pour transmission de la procédure au procureur de la République qui prendra une décision sur l'action publique, soit pour continuation de l'enquête sans qu'il soit besoin de prendre à son encontre de mesure particulière, soit parce qu'aucun élément ne peut être retenu à son encontre, la procédure étant alors classée sans suite par le procureur de la République.</li> <li>2. la personne peut faire également l'objet à l'issue de sa garde à vue des mesures suivantes, étant toutefois remis en liberté à l'issue de sa garde à vue : <ul style="list-style-type: none"> <li>* s'agissant d'une personne majeure : <ul style="list-style-type: none"> <li>- soit d'une convocation devant le procureur de la république ou devant un de ses délégués, aux fins de mise en oeuvre d'une mesure alternative aux poursuites prévues aux articles 41-1 du CPP (rappel à la loi, orientation de l'auteur vers une structure sanitaire, sociale ou professionnelle, demande de régularisation, demande de réparation du dommage résultant de l'infraction ou médiation) et 41-2 du CPP (composition pénale),</li> </ul> </li> </ul> </li> </ol>

	<p>- soit d'une convocation devant le tribunal correctionnel (pour le jugement des délits, art.390-1 du CPP) ou devant le tribunal de police (pour le jugement des contraventions, art 533 du CPP).</p> <p>* s'agissant d'une personne mineure :</p> <p>- soit des mesures déjà exposées, de l'art. 41-1 du CPP, soit d'une mesure de réparation prévue à l'article 12-1 de l'ordonnance du 2 février 1945 relative à l'enfance délinquante</p> <p>- soit d'une convocation devant le juge des enfants (article 8-1 de l'ordonnance du 2 février 1945 relative à l'enfance délinquante)</p> <p>3. la personne peut faire l'objet d'une présentation devant le procureur de la République:</p> <p>* s'agissant d'une personne majeure :</p> <p>- soit elle sera convoquée directement devant le tribunal, dans un délai de 10 jours à deux mois, le président du tribunal ou juge délégué par lui pouvant sur réquisition du procureur de la République, la placer sous contrôle judiciaire jusqu'à sa comparution devant le tribunal (art.393 à 394 du CPP)</p> <p>- soit elle sera présentée devant le tribunal correctionnel pour être jugé immédiatement (procédure de comparution immédiate) (art.395 du CPP),</p> <p>- soit elle sera présentée devant le juge d'instruction en vue de l'ouverture d'une information judiciaire (art.79 et suivants du CPP). Il y a lieu de relever qu'en matière criminelle l'instruction préparatoire est obligatoire (art.79 du CPP).</p> <p>Dans ce dernier cas, le procureur de la République peut requérir le placement sous contrôle judiciaire du mis en examen ou son placement en détention provisoire.</p> <p>S'agissant du placement sous contrôle judiciaire (art.137 à 143 du CPP), cette décision est prise le cas échéant par le juge d'instruction, le contrôle judiciaire pouvant comporter comme obligation le versement d'une caution (art 142 à 142-3 du CPP).</p> <p>S'agissant du placement en détention provisoire (art.143-1 à 148-8 du CPP), le juge d'instruction, s'il suit les réquisitions du procureur de la République doit, depuis l'entrée en vigueur de la loi du 15 juin 2000 (le 1er janvier 2001) saisir le juge de la liberté et de la détention par une ordonnance motivée (art.145 du CPP). Le juge de la liberté et de la détention statuera sur cette demande de placement en détention provisoire à l'issue d'un débat contradictoire au cours duquel interviendra le procureur de la République et l'avocat de la personne mise en examen.</p> <p>* en ce qui concerne les personnes mineures, elles peuvent, si à l'issue de leur garde à vue elles sont sur décision du procureur de la République déférées devant lui, soit faire l'objet d'une information judiciaire (ce qui est obligatoire en application de l'art.79 du CPP en matière criminelle et possible en matière correctionnelle) dans les conditions exposés ci-dessus, soit être présenté devant le juge des enfants en matière correctionnelle.</p> <p>En application de l'ordonnance du 2 février 1945 relative à l'enfance délinquante, il y a lieu de relever qu'en matière criminelle, un mineur peut être placé en détention provisoire s'il est âgé de 13 ans au moins. En matière correctionnelle, il peut être placé en détention provisoire s'il est âgé de 16 à 18 ans.</p>
<b>Germany</b>	<p>(a) There is no rigid time limit in this respect. However, Section 121 StPO stipulates the following:</p> <p>As long as a judgment has not been given imposing imprisonment or a custodial measure of reform and prevention, remand detention (arising from the basis of a warrant of arrest) for one and the same offence</p>



	<p>exceeding a period of six months can be maintained only if the particular difficulty or the unusual extent of the investigation or some other important reason do not yet admit pronouncement of judgment and justify continuation of remand detention.</p> <p>In the aforementioned cases the warrant of arrest shall be revoked upon expiry of the six-month period unless execution of the warrant of arrest is suspended pursuant to Section 116 StPO (on the basis of conditions or instructions) <u>or</u> the Higher Regional Court orders remand detention to continue using special proceedings relating to the review of remand in custody.</p> <p>(b) The interview may, in principle, be recorded on tape. A record of the interview is drawn up on the basis of the tape recording. Where appropriate, subject to a corresponding request from the parties to the proceedings or an <i>ex officio</i> request, it shall be established in the context of the continuation of the proceedings whether or not the record of the interview deviates from the tape recording.</p> <p>Tape recordings of interviews of defendants are always admissible if the person concerned is informed in advance that the interview is to be recorded. However, secret tape recordings, i.e. those made without the consent of the defendant, are not admissible.</p> <p>The same applies to video recordings; however, with the exception of reconstructions carried out with the consent of the defendant, they should otherwise have no de facto significance.</p> <p>In principle, no copies are made; however, defence counsel may play these recordings by virtue of his right of inspection of files pursuant to Section 147 StPO.</p> <p>(c) The decision as to whether the defendant will be granted or refused bail is made by the committing magistrate (Section 116 paragraph 1 StPO). He also sets the level and nature of the security, which is to be furnished by depositing cash or securities, by pledging property or in the form of a surety by suitable persons, at his own discretion (Section 116a StPO). The police or the public prosecution office are not authorised to grant bail (by pledging a security).</p>
<b>Greece</b>	<p>The suspect who has been arrested is usually held in the special chambers of the prison or in the police establishments. Within twenty four hours from his arrest, he must be presented before the investigator, who, in his turn, must decide either to initially acquit him or to issue a warrant for the suspect's detention<sup>103</sup>. This detention lasts until the judicial council, which is vested with the power to refer a case to trial and press charges or to acquit, either acquits the suspect or orders certain restrictive measures on the accused person's freedom of movement or even his temporary detention. It is not specified how long a suspect's detention may last. An accused person's detention, however, when ordered, cannot last for more than six months in cases of misdemeanours or one year in cases of felonies. The frequent incompliance observed as to these time limits led to a recent insertion of a new subparagraph in paragraph 4 of article 6 of the Constitution, stipulating that any violation of these time limits through successive periods of temporary detention for partial acts committed in the context of the same case is forbidden.</p> <p>There is no express legal provision as to the possibility of tape or video recording of any interview. In any case, practice has it that the suspect or accused person will present his deposition to the investigating authority in writing, as the investigation is, to a large extent, written and not oral.</p>

<sup>103</sup> Article 6, para. 2 of the Constitution.

	(c) The investigating authority conducting the summary investigation is authorised to grant or refuse bail for the suspect.
<b>Hungary</b>	<p>(a) The Criminal Procedure Code does set an absolute end for pre-trial detention if its duration reaches three years.</p> <p>Furthermore, the law provides that before the submission of the charges to the court by the prosecutor, the investigating judge shall examine the necessity of the detention</p> <p>— on the first occasion not later than a month after that he/she has first ordered the measure,</p> <p>— on the next occasions not later than in every three months.</p> <p>After a year, a higher court (departmental court) has to examine the necessity of the pre-trial detention in every two months. No investigation conducted against a defined suspect shall be longer than two years. Failing to order the prolongation of the detention within the time limits, the measure is automatically lifted.</p> <p>(b) The suspect has the right to initiate that the interview be tape-/video recorded. The rules of entitlement are the same as in the case of requesting other documents. Among others, the suspect and the counsel, within 8 days of their request, receive a copy of all documents requested that were produced during the criminal procedure. The suspect is in most cases entitled to request a copy or many copies as long as he or she pays the costs of issuing the copy. The copies of the documents are free of charge for the suspect if he/she was granted a special exemption from the expenses of the criminal procedure on the basis of his/her financial situation.</p> <p>(c) Only a judge has the authority to accept or refuse bail.</p> <p><b>5) Detention and questioning [answers to the corrected set of questions only]</b></p> <p><b>NB Could you elaborate on who may initially arrest a suspect and which time limits must be observed, i.e.:</b></p> <p><b>i) Does your country recognize a right for anyone to apprehend a person observed in the act of committing an offence (in flagrante delicto) or fleeing from it?</b></p> <p>Yes.</p> <p><b>ii) If this is the case, which is the time limit for turning over such a person to the competent authorities?</b></p> <p>Anyone shall turn over such offender to the investigating authority or to the police without delay.</p> <p><b>iii) Which authorities/officials may take the initial decision on arrest/apprehension?</b></p> <p>All investigating authorities and every person entitled to investigate (captain of a ship or aircraft)</p> <p><b>iv) Which is the time limit for contacting the prosecutor/other legal authority/court after the initial decision on arrest/apprehension?</b></p> <p>This type of arrest lasts no longer than 72 hours. Also, the measure shall be immediately lifted when the cause of custody ceases to exist.</p>
<b>Ireland</b>	<p>(a) 1. <u>General powers of detention</u></p> <p>Section 4 of the Criminal Justice Act, 1984 provides for 12 hours detention, made up of 6 hours initial detention with scope for a 6 hour extension on the authority of a senior member of the Gardaí, where a person has been arrested for an arrestable offence (offences punishable by</p>

	<p>5 years imprisonment or more).</p> <p><b>2. Offences Against the State Act</b></p> <p>Section 30 of Offences against the State Act, 1939 provides for the detention of a person arrested under that section for up to 48 hours, made up of an initial detention of 24 hours with scope for a 24 hour extension on the authority of a senior member of the Gardaí. Section 10 of the Offences against the State (Amendment) Act, 1998 provides for a further extension of 24 hours on the authority of a judge of the District Court. The detention can be made on the suspicion that the person has committed or is about to commit or be concerned with the commission of an offence which is a scheduled offence under the 1939 Act. Suspicion can also relate to the carrying of a document or the possession of information related to the commission or intended commission of any such offence. Certain provisions of the later Act, including the detention provisions, must be reviewed annually by both Houses of Parliament or else they lapse.</p> <p><b>3. Drug Trafficking</b></p> <p>The Criminal Justice (Drug Trafficking Act), 1996 provides for detention for up to 7 days of a person arrested for a drug trafficking offence, made up of an initial detention of 6 hours with scope for extensions up to a total of 48 hours on the authority of a senior member of the Gardaí. Further extensions of up to an additional 5 days are provided for on the authority of a judge of the District or Circuit Court. The detention provisions of the Criminal Justice (Drug Trafficking Act), 1996, must be reviewed from time to time by both Houses of Parliament or else they lapse.</p> <p>(b) A system is currently being introduced to ensure that audio or video recording facilities exist in Garda (Police) Stations so that the recording of interviews will be the norm. Three copies of a video recording are made, one of which is deemed to be a master copy and sealed. One would be used as a working copy for the Gardaí (Police) investigating a case and the third might for instance be furnished if necessary to the Office of the Director of Public Prosecutions or otherwise used in connection with an investigation or prosecution. The person interviewed may request in writing to be furnished with a copy of the tape which should be complied with unless the Superintendent or the Garda Síochána in the district where the interview took place believes that it would prejudice an ongoing investigation or endanger the safety, security and well being of another person.</p> <p>(c) Where a suspect has been charged at a police station and not then released on bail by the police he or she must, as soon as reasonably practicable, be brought before the Judge at the District Court who will decide whether or not he should be released on bail. A refusal can be appealed to the High Court.</p>
<b>Italy</b>	<p>(a) A person arrested or apprehended (or subject to an emergency detention measure at the initiative of the criminal police) may be questioned immediately by the public prosecutor, who must inform the person of the offences being investigated (Article 388); the suspect is in any case questioned by the judge required to confirm the measure, at the confirmation hearing, which must be held at latest within 96 hours of imposition of the detention measure (Article 391).</p> <p>Persons held on remand in custody must be questioned by the judge within 5 or 10 days of imposition of the detention measure, depending on whether remand in prison or other measures are involved (Article 294 CCP).</p> <p>(b) Yes, in cases of questioning (taking place outside of hearings) of</p>

	<p>persons who have been detained. In such cases, a full record, including tape and video records, must be available and, if it is not, it is deemed inadmissible. If recording equipment or technical personnel are not available, questioning continues using the methods specified by experts or technical consultants; a summary record of the questioning is also drawn up. The transcription of the recording is made available only if the parties so request (public prosecutor, suspect and defence counsel). A copy of a video recording may be requested by the parties to the proceedings, as above.</p> <p>(c) There has been no bail or “provisional liberty” in our system since the 1980s: remand measures are subject to maximum periods and, in the case of those imposed to prevent any tampering with evidence, a maximum period has to be set from the outset.</p> <p>Any measure is revoked (possibly by the courts of their own motion) as soon as there is no need (or no longer any need) for suspects to be detained. In the case of arrest and apprehension, detention may be continued after the confirmation of the measure (to be obtained within 96 hours of imposition of the measure) only by order of the court acting on a reasoned request from the public prosecutor for the imposition of a remand measure.</p>
<b>Latvia</b>	<p>(a) A person, which is suspected of committing a crime punishable with deprivation of liberty, can be detained only under one of the following conditions:</p> <ul style="list-style-type: none"> <li>• If this person observed in the act of committing an offence or promptly after the offence has been committed;</li> <li>• If the witnesses, amidst them also the suffered persons, directly indicate on the person as one has been committed an offence;</li> <li>• When there are found on the suspect or on his cloths obvious traces (signs) of the offence.</li> </ul> <p>If there are another facts giving the ground to suspect anybody in committing a criminal act, this person can be detained only in the case of making an attempt to flee away or the person has no constant living place, or has not been identified the personality of the suspect.</p> <p>A suspect is acknowledged a person detained in accordance with above mentioned or to whom ahead of charging was applied a safety measure. A person is not acknowledged a suspect with special decision of the procedural advancer.</p> <p>According to p.122 of Latvian CPC a person suspected in committing a criminal offence cannot be detained longer than for seventy two hours. This term is computed from the moment of actual detention.</p> <p>According to the Article 70 of the Latvian Code of the Criminal Procedure, in exceptional cases it is allowed to detain a person without charge. In this case the accusation has to be presented to the suspect not later than ten days since the day of detention. A person that is suspect for committing very serious crime or if the case will be considered in the district court then the accusation has to be presented not later than thirty days since the day of detention.</p> <p>(b) In accordance with p.85.1 of Latvian CPC the procedural advancer can fixate consecution of investigation activities, including the questioning of the suspect, on audio-, video-records, informing about this in advance persons, taking participation in investigation process. After the investigation is over, persons participated in it, have right to look on or overhear the records made. Investigation activities’ records are kept in the criminal case and copies of them are not produced.</p> <p>In accordance with p.203 of Latvian CPC, when the pre-trial investigation</p>

	<p>is completed, the accused of a crime is familiarized with all criminal case materials. If shootings, video- or audio- tape recording were done during the the time of pre-trial investigation, they are demonstrated or reproduced from the tape to the accused and his defender.</p> <p>Video and audio recordings are allowed during the interview. According to the Article 85 of the Latvian Code of Criminal Procedure all the audio and video recordings done during the interview are enclosed and stored with the case.</p> <p>(c) In duration of 24 hours from the detention moment, preliminary investigation institution informs the prosecutor on the detention made, presenting to him case materials. After the detention term has been expired (72 hours) the preliminary investigator or prosecutor have to receive the decision of judge on applying safety measure – imprisonment – for the suspect, or he is to be released. At the same time preliminary investigator or prosecutor can apply another safety measure – for example, personal bail. Safety measures can be applied to the suspect also ahead of charging. In this case the charging is to be done no later than in ten days from the moment of applying of safety measure. If a safety measure is applied in relation of person, suspected in committing especially serious crime or in committing a crime to be prosecuted by the District Court, this person is to be charged no later than in time of thirty days from the moment the safety measure was applied. If during this time the charging has not be done, the safety measure is to be revoked.</p> <p>Procedural advancer (preliminary investigator or prosecutor) has to take a persuasive decision on applying a safety measure. Resolving the question on applying the safety measure and choosing the specific one procedural advancer is considering the gravity of committed crime, personality of the suspect, probability of evading the investigation or impeding to establish the truth by the suspect, either threatening or influencing persons testifying in the case, as well as occupation of the suspect. Age, state of the health, family situation and other circumstances.</p> <p>If the accusation has not been presented during this period a person has to be released from detention.</p> <p><b>NB.</b></p> <ul style="list-style-type: none"> <li>i) <b>Latvia recognises the right for anyone to apprehend a person observed both in the act of committing an offence or fleeing from it.</b></li> <li>ii) <b>The apprehended person has to be turned over to the competent authority immediately.</b></li> <li>iii) <b>The initial decision on arrest/apprehension can be taken by investigating authority or the prosecutor.</b></li> <li>iv) <b>According to the Article 122 of the Latvian Code of Criminal Procedure the investigating authority is obliged to inform prosecutor about the fact of apprehension presenting all the materials of the case within 24 hours.</b></li> </ul>
<b>Lithuania</b>	<p>a) Pursuant to Article 140 of the Code of Criminal Procedure, a person who is caught committing or just after committing a criminal act, when he has committed the criminal act or when there are grounds to believe that the person in question might escape or it is not initially possible to established his identity and in other instances in which there are grounds and conditions for arrest, may be detained for no longer than 48 hours. If within this period the person has not been issued with a notification of suspicion, has not been questioned and the court has not ordered his arrest, he must be released. Under the Code of Criminal Procedure, at the stage of the pre-trial investigation a person is deemed to be a suspect and</p>

	<p>is informed of the suspicion but is not yet accused of a criminal act. Consequently, until such time as an official notification of suspicion is issued, the person may be detained for no longer than 48 hours. The pre-trial investigation official, the public prosecutor and the court must inform the suspect or accused of his right to a defence lawyer from the time of detention or first questioning and provide him with the opportunity of using that right. If the defence lawyer chosen by the suspect, accused or convicted person is unable to attend the first questioning or hearing concerning the reasons for arrest within six hours, the pre-trial investigation official, public prosecutor or court have the right to propose to the suspect, accused or convicted person that another defence lawyer be asked to attend the questioning or hearing, and if they do not do so, the lawyer on call must be appointed and invited (Article 50 of the Code of Criminal Procedure). Whenever the nature of the criminal act becomes clear, the public prosecutor and the pre-trial investigation officer must, within the limits of their powers, take all the measures provided for by law to ensure that the investigation is completed in as short a time as possible (Article 2 of the Code of Criminal Procedure).</p> <p>b) In carrying out an investigation, an investigation report must be drawn up. Photography, filming, sound and video recording and the use of means of recording may be used during an investigation. If technical means are used, the report must indicate the conditions applied and procedure followed for their use. Photographs, negatives, digital storage media, sound and video recordings and other technical means used in the course of an investigation shall be attached to the investigation report (Article 179 of the Code of Criminal Procedure). The suspect and his defence lawyer and the victim and his representative are entitled at any time during the investigation to have access to data relating to the investigation and to make copies and recordings of investigation material. A request to have access to data relating to the investigation or to make copies and recordings of investigation material must be submitted to the public prosecutor (Article 181 of the Code of Criminal Procedure).</p> <p>c) If a person is detained on the basis of and in accordance with the procedure laid down by Article 140 of the Code of Criminal Procedure and the court does not order his arrest within the prescribed period of 48 hours, the pre-trial investigation officer who detained the person or the public prosecutor may release him. If an order to arrest the suspect has been issued, the prosecutor or court may release him (including on bail). The amount of bail shall be determined by the officer in question or the court taking account of the criminal act committed, the amount of the potential fine, the financial situation of the suspect and the person putting up the bail and his identity (Article 133 of the Code of Criminal Procedure). Bail is granted by decree of the public prosecutor, the pre-trial investigation judge or the court (Article 121 of the Code of Criminal Procedure).</p>
<b>Luxembourg</b>	<p>a) En ce qui concerne les enquêtes des crimes ou délits flagrants et si les nécessités de l'enquête l'exigent, l'officier de police judiciaire peut, avec l'autorisation du Procureur d'Etat, retenir pendant un délai qui ne peut excéder 24 heures, les personnes contre lesquelles il existe des indices graves et concordants de nature à motiver leur inculpation. Dans la cas d'un mandat de comparution, l'inculpé sera interrogé de suite par le juge d'instruction. Dans le cas de mandat d'amener ou de mandat d'arrêt, il sera entendu dans les 24 heures au plus tard de son entrée dans la maison de détention.</p> <p>b) Non. D'après l'article 48-1 cependant l'audition d'un mineur peut faire</p>

	<p>l'objet d'un enregistrement sonore ou audiovisuel, sur autorisation du Procureur d'Etat.</p> <p>c) Dans le cours de l'instruction le juge d'instruction pourra, sur les conclusions du Procureur d'Etat, donner mainlevée de tout mandat de dépôt ou d'arrêt à la charge, par l'inculpé, de se représenter à tous les actes de procédure et pour l'exécution du jugement aussitôt qu'il en sera requis (art. 94-2).</p> <p>Si la chambre du conseil du tribunal d'arrondissement ou de la cour d'appel n'a pas statué sur l'inculpation dans le mois à compter du premier interrogatoire, le Procureur d'Etat ou le Procureur Général d'Etat requièrent la mise en liberté immédiate de l'inculpé, sauf si le maintien de la détention s'impose (art.94-3).</p> <p>L'article 113 dispose qu'en toute matière, la chambre du conseil pourra, sur la demande de l'inculpé et sur les conclusions du Procureur d'Etat, ordonner que l'inculpé sera mis provisoirement en liberté, à charge de celui-ci de prendre l'engagement de se représenter à tous les actes de la procédure et pour l'exécution du jugement aussitôt qu'il en sera requis. La mise en liberté provisoire pourra être subordonnée à l'obligation de fournir un cautionnement.</p>
<b>Malta</b>	<p>(a) 48 hours.</p> <p>(b) The police, the accused and the Court.</p> <p>(c) The Court.</p>
<b>The Netherlands</b>	<p>A suspect must be charged and brought before an examining judge within three days and 15 hours, counting from the time the arrest has been made (article 59a).</p> <p>Occasionally the interview is taped or video recorded. The police force decides if an interview is taped or video recorded and how many copies they make. The prosecution, the defendant and the court may receive or at least watch a copy.</p> <p>In the Dutch legislation is the examining judge authorised to decide whether the suspect will be granted or refused bail. Bail is only possible as a condition of the suspension of the pre-trial custody (article 80).</p>
<b>Poland</b>	<p>(a) In the Polish legal system detention is effected by the police. A suspect should be informed of the charges levelled against him/her within 48 hours from the detention. At the same time, the prosecutor should hear the suspect as long as there is a need to apply protective measures, and if there are any premises to apply preliminary detention, a motion for application of this measure should be forwarded to the court. The court should decide on the issue of application of preliminary detention within 24 hours, determining the period of detention to be applied.(art. 248 of the Code of Criminal Procedure).</p> <p>(b) Minutes are always taken during the questioning of the suspect (and later of the accused) (art. 244 of the Code of Criminal Procedure). According to Article 147 of the Polish Code of Criminal Procedure, the course of the recorded actions may be additionally tape- or video-recorded. It is an optional action. This additional tape- or video-record constitutes the attachment to the minutes. The party has a right to receive one copy of the tape- or video-record on his/her own expenses.</p> <p>(c) In preparatory proceedings the choice of a protective measure in the form of bail is on a prosecutor who issues a proper decision.</p>
<b>Portugal</b>	<p>Article 28 of the Constitution of the Portuguese Republic, states that detention must be referred to a judge within 48 hours, for restitution of freedom or imposition of adequate coercive measures. The judge should</p>

	<p>be informed of the relevant determining facts and communicate them to the detainee. The detainee should be interviewed and given the opportunity for a defence.</p> <p>The detainee is presented to the appropriate public prosecutor's office in the area in which he was detained. An initial hearing can take place at this office. The questioning takes place in accordance with the rules of judicial questioning, except with regard to the attendance of a defence lawyer, which will only take place, if the accused, once he has been informed of his rights, requests one. After the initial interview, and if the accused is not released, the public prosecutor sends the accused to appear before the examining judge, under the following terms (Article 143 of the Portuguese Criminal Code).</p> <p>If the detainee does not stand trial immediately, he is questioned by the examining judge, as soon as he appears, and within a maximum period of 48 hours from the time of detention. He is informed of the reasons for the detention and of the proof for it. The questioning is undertaken solely by the judge, with the assistance of the public prosecutor, and the defence lawyer and, if present, the clerk (Article 141 of the Portuguese Criminal Code).</p> <p>(a) The first questioning is not usually recorded on audio or video cassette.</p> <p>(b) The person who can order the release of the accused, after the first interview with the same, is the officer in the public prosecutor's office, or the examining judge, depending on the questioning involved (see earlier answer).</p>
<b>Slovak Republic</b>	<p>If any of the grounds for custody are present, an investigator or a police authority may detain a person suspect of crime even before any charge has been lodged against the person. To make the detention he shall need a prior authorization by a prosecutor. Without such authorization the detention shall only be possible if the matter is urgent and it was not possible to secure the authorization in advance, in particular if the person concerned was caught in the act of committing a crime or attempting to escape.</p> <p>The investigator or a police authority who carried out the detention or to whom a person caught committing a crime was handed over under paragraph shall promptly notify the prosecutor of the detention and draw up a report giving the place, time and detailed description of the circumstances of the detention as well as essential grounds for it, and personal data of the detained person. He shall promptly deliver a duplicate of the report to the prosecutor.</p> <p>The investigator or a police authority who detained the person or to whom a person caught committing a crime was handed over under paragraph, shall promptly inform such person about the grounds for detention and conduct the questioning: if the suspicion is cleared or if the grounds for detention disappear because of other reasons, the person shall be immediately released. If the detained person is not released, the investigator shall submit a prosecutor the interrogation report including the ruling on laying the charges and other evidence so as to enable the prosecutor, if appropriate, to file a motion for taking the person into custody. Such motion shall be filed without any delay so as to hand the detained person over to the court not later than within 48 hours from the detention or taking over; otherwise the person shall be released.</p> <p>The detained person shall have the right to choose a counsel and to consult him already at the moment of detention, and to request the presence of the counsel at the interrogation, unless the counsel cannot be reached within the time limit specified therein.</p>



	<p>If, on the basis of the file received and/or further questioning of the detainee, a prosecutor does not issue the order to release such person, he shall have to hand the detainee over to a court within 48 hours from the moment of detention or the taking over, with a motion to place the person in custody. The judge shall have to interrogate the detainee and, within 48 hours and regarding to particularly serious offences not later than 72 hours after receiving a motion from a prosecutor, to decide on the release or the remand in custody of the person. If the elected or assigned counsel can be reached and if the detainee asked for his presence, the judge shall immediately notify the counsel and the prosecutor in the prescribed manner of the time and place of interrogation. The counsel and the prosecutor may take part in the interrogation and ask questions, but only with the permission of the judge. If the 48 – hours time limit and regarding to particularly serious offences not later than 72 hours between receiving the prosecutor's motion for the remand in custody is exceeded, this shall always be the reason for releasing the accused.</p> <p>See no. 8 and no. 1 /part related to the interpreting /</p>
<b>Spain</b>	<p>(a) A suspect may not be detained without charge any longer than is strictly necessary to complete the inquiries involved in clarifying the facts, and in any case within the maximum time limit of 72 hours the suspect must either be freed or placed at the disposal of the judicial authority (Art. 17.2 Spanish Constitution and Art. 520.1 LECR). However, in the case of suspects held for certain crimes covered by Art. 384 b of the LECR (armed, terrorist or rebel groups) the maximum time limit for detention may be extended by the time required for the purposes of the investigation up to a limit of a further 48 hours after the first 72 hours, as long as the Judge authorises this by reasoned decision (Art. 520 a 1).</p> <p>(b) This is not covered in our legislation. However, such recordings would be valid if accepted by both parties or authorised by the judicial authority.</p> <p>(c) Provisional liberty or bail may only be granted or denied by the Judge in full knowledge of the facts (Arts. 502 and 504 LECR).</p>
<b>Sweden</b>	<p>(a) The decision on the application of pre-trial detention is taken by the competent district court at the request of the public prosecutor. When the court decides to remand someone in custody it shall at the same time announce the latest time when the summons shall be presented to the court, if the summons has not been presented already. The time must not be longer than absolutely necessary but can be prolonged at the request of the prosecutor. Such a request must be made before the time expires. If the summon is not presented within two weeks, the court must hold a new session on the pre-trial detention issue and continue to do so every two weeks until the summon is presented. The court shall see to it that the investigation is carried out speedily. If it is obvious that it is not necessary to hold new sessions so frequently the court can decide to hold new sessions less frequently (Chapter 24 Section 18 of the Code of Judicial Procedure). A review of the decision to hold a suspect in pre-trial detention may be requested by the suspect or the defence counsel at any time. The court – or the prosecutor if the summon has not been presented to the court – may also release the suspect any time on its own initiative. If a defendant's request for release is not granted, he may appeal. There are no limitations with regard to the numbers of appeal.</p> <p>(b) There is no obligation to record an interview with the suspect. However, if the interview is recorded, the suspect and his defence-counsel are entitled to a copy of the recording when the preliminary</p>

	<p>investigation is completed. Normally, the recorded interview is written down on paper.</p> <p>(c) In Sweden there are no possibilities to impose bail.</p>
<b>United Kingdom</b>	<p><u>England &amp; Wales</u></p> <p>(a) A suspect may be detained for up to 24 hours without being charged for an offence. This can be extended to up to 36 hours by a police officer of the rank of superintendent or above where a person has been arrested for a serious arrestable offence, and further extended up to 96 hours by a magistrates' court.</p> <p>(b) Interviews with suspects at police stations are tape-recorded in accordance with PACE. Two copies are made, a master tape and a working copy. A copy of the tape is supplied to the suspect as soon as practicable if the person is charged or informed that he will be prosecuted. The custody officer may authorise the interviewing officer not to tape record the interview:</p> <p>(i) where it is not reasonably practicable to do so because of failure of the equipment or the non-availability of a suitable interview room or recorder and the authorising officer considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available; or</p> <p>(ii) where it is clear from the outset that no prosecution will ensue.</p> <p>A limited number of forces make videotape recordings of interviews in serious and complex cases. A smaller number of forces also make use of video-recording of interviews on a wider range of offences, although this is not currently widespread practice. There are no immediate plans to make videotaping of interviews with suspects mandatory. The Government is undertaking a pilot scheme to assess the benefits of videotaping interviews.</p> <p>(c) Decisions on bail once a suspect has been charged at the police station are taken by the custody officer.</p> <p><u>Scotland</u></p> <p>(a) A person can be detained for up to 6 hours by the police if they are suspected of having committed a criminal offence.</p> <p>(b) The tape and video recording of interviews is dependent on the availability of facilities and officers trained in the techniques. In general terms 2 copies of such tapes are made. One copy is sealed in a tamperproof manner and lodged unopened for the purposes of court proceedings.</p> <p>(c) In Scotland, the officer in charge of the relevant police station has the power to liberate any person charged with a criminal offence which may be tried summarily, with or without the person charged giving an undertaking to appear at a specified court at a specified time. This is termed police liberation: it is not the same as bail.</p> <p>A sheriff is authorised to decide whether or not to grant bail where the crime of which the person is charged is a serious one. Such a decision would be made when the accused first appears before the sheriff in chambers for judicial examination. Where the crime of which the person is charged is less serious, a justice of the peace and a sheriff are both authorised to decide whether or not to grant bail when the person first appears in court.</p>

<p><b>Question 6</b></p>	<p><b>6) Access to an interpreter/translator</b></p> <p>(a) <b>If the suspect does not understand the language of the State or region in which he finds himself accused, what provisions exist for interpretation of questions and translation of relevant documents?</b></p> <p>(b) <b>Is there a scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station? If so, what languages are covered?</b></p> <p>(c) <b>Is there a scheme for recruiting qualified translators/interpreters to work in police stations and courts? If so, how is it administered? What qualifications are required of the translators/interpreters? Are there any specific qualifications recognised officially (for example by the Ministry of Justice) for this specialised area of translation/interpretation?</b></p> <p>(d) <b>Are the interviews and the interpretation of questions and replies tape- or video recorded? Is there any system for verifying the quality and accuracy of the translation/interpretation?</b></p> <p>(e) <b>What mechanisms exist to ensure that suspects who are foreign nationals understand the proceedings and what they are accused of from a legal point of view?</b></p>
<p><b>Austria</b></p>	<p>(a) The suspect will be granted the assistance of an interpreter (§ 38a of the Code of Criminal Procedure). See also response to Questions 1c, 6e, 7c and 8a.</p> <p>(b) The General Administrative Procedures Act of 1991 (AVG), also employed in road traffic cases by the police, similarly specifies that if necessary an interpreter who is assigned to or at the disposal of the authority (official interpreter) should be called upon if a party or a person who is to be questioned does not have adequate knowledge of the German language (§ 39a of the Act). If no interpreter is available, the authority may exceptionally consult other suitable persons (§ 52 paragraph 2 of the Act). In view of the precept of the <i>immediate questioning</i> of a detained defendant by the police (§ 177 paragraph 2 of the Code of Criminal Procedure), “other suitable persons” of this kind must be resorted to, or another language which the defendant has a command of as a foreign language, especially in the case of defendants from Asia.</p> <p>(c) Austrian courts select interpreters from a list of sworn experts. These lists are maintained by the presidents of the district courts. The terms of the Federal Law on sworn and certified experts and interpreters (Federal Law on sworn and certified experts and interpreters - SDG) specify as a requirement for registration, amongst other things, five years working experience as a translator or interpreter immediately before registration, or two years similar working experience, if the applicant has completed a course leading to a diploma in translating and interpreting or an equivalent course of study abroad (§ 14 - SDG). Inclusion on this list is initially for a limited period only, and applications for extension must quote file references for the court proceedings in which the interpreter has been involved (§ 14 in conjunction with § 6 of SDG). The President of the district court will decide on the continued suitability of the interpreter on the basis of those documents.</p> <p>(d) Austrian law makes no provision for the questioning and interpreting to be recorded. Any desire to record all of the questioning for which interpreters provide assistance seems impracticable in view of the hours’ or days’ worth of tape recordings from which passages under scrutiny must be filtered. The quality of translation is guaranteed by the strict criteria which interpreters must satisfy for initial and permanent inclusion</p>

	<p>in the list of sworn and certified interpreters.</p> <p>(e) At the commencement of the questioning of a defendant by the examining judge during the preliminary proceedings, the examining judge must as a rule specify the crime or offence of which he is accused (§ 199 paragraph 2 of the Code of Criminal Procedure). At the same time the defendant must be cautioned about his essential rights in the proceedings. The police are subject to a similar obligation. The use of interpreters has already been examined in the responses to several of the questions. The information which the examining judge and the police are under an obligation to provide will be translated by an interpreter. The suspect must be notified as soon as preliminary charges are brought against him or preliminary investigations have been initiated. Such notification must include the subject of the accusation and a caution about essential rights in the proceedings (§ 38 paragraph 4 of the Code of Criminal Procedure). Most courts will have a form which translates the caution into the most commonly encountered languages, which the examining judge must ensure reaches the defendant in the appropriate language version.</p>
<b>Belgium</b>	<p>(a) Par application de l'article 31 de la loi du 15 juin 1935 concernant l'emploi des langues en matière judiciaire, dans tous les interrogatoires de l'information et de l'instruction ainsi que devant les juridictions d'instruction et les juridictions de jugement, l'inculpé fait usage de la langue de son choix pour toutes ses déclarations. Il en est de même pour la partie civilement responsable. Si les agents chargés de l'information ou le parquet ou le magistrat instructeur, ou les juridictions précitées, ne connaissent pas la langue dont il est fait usage par l'inculpé, ils font appel au concours d'un traducteur-juré. Les frais de traduction sont à charge du trésor.</p> <p>Pour les témoins, la loi prévoit la même disposition : « Les témoins sont entendus et leurs dépositions sont reçues et consignées dans la langue de la procédure, à moins qu'ils ne demandent de faire usage d'une autre langue. Si les magistrats ou les agents chargés de l'audition des témoins ne connaissent pas cette langue, ou si l'inculpé le demande, il est fait appel à un traducteur juré. Les frais de traduction sont à charge du Trésor ».</p> <p>L'article 47bis, 5, du Code d'instruction criminelle dispose, par ailleurs, que si la personne interrogée souhaite s'exprimer dans une autre langue que celle de la procédure, soit il est fait appel à un interprète assermenté, soit il est noté ses déclarations dans sa langue, soit il lui est demandé de noter elle-même ses déclarations. Si l'interrogatoire a lieu avec l'assistance d'un interprète, son identité et sa qualité sont mentionnés. Les actes de procédure sont établis dans la langue de la procédure. A chaque acte, établi dans la langue de la procédure, mais qui doit être notifié dans une région (située en Belgique) où une autre langue est, légalement, en usage, une traduction est jointe (art. 38 de la loi précitée du 15 juin 1935). Les frais de traduction sont à charge de l'Etat. Par ailleurs, l'inculpé, la partie civilement responsable et la partie civile peuvent toujours, à leurs frais, obtenir la traduction de n'importe quel acte de procédure (art. 38, in fine, précité). En ce qui, concerne la prise en charge de ces frais pour les personnes dont les revenus sont insuffisants, il y a lieu de se référer aux réponses données aux questions relatives à l'assistance judiciaire.</p> <p>(b) Il n'existe pas de système légalement organisé d'aide linguistique urgente mais, en pratique, les parquets diffusent dans les services de police des listes d'interprètes assermentés (Voir Q &amp; R, Chambre, 1977-</p>

	<p>78, 13 janvier 1978, n° 43, p. 3230; Question n° 42 VANSTEENKISTE). Il n'est pas possible de déterminer précisément quelles langues sont couvertes par ce système empirique.</p> <p>(c) Les interprètes et traducteurs assermentés n'ont pas encore de statut légal, bien que le principe d'un tel statut soit prévu par la loi (Code judiciaire, article 991). La mise en place d'un statut est, en ce moment, à l'ordre du jour des travaux du Gouvernement.</p> <p>Dans la pratique, les cours et tribunaux, réunis en assemblée générale, et sur avis du ministère public (relatif, notamment, à la réputation et à la compétence) désignent des traducteurs/interprètes qui sont appelés à prêter serment (note F.E., sub Antwerpen, 24 décembre 1975, R.W., 1976-77, 820). Par application de l'article 322 du Code d'instruction criminelle, les interprètes doivent être âgés de 21 ans au moins.</p> <p>(d) Il n'y a pas d'enregistrement. La Cour de cassation considère que les droits de la défense, quant à l'emploi des langues, sont garantis, notamment, par le droit des parties de faire traduire les documents rédigés dans une autre langue que celle de la procédure, de contester la traduction proposée ou d'en provoquer une traduction officielle (Cass., 11 septembre 1991, Pas., 1992, p. 24). Il n'existe pas de système spécifique de vérification de la qualité et de l'exactitude de la traduction et de l'interprétation.</p> <p>(e) V. supra Il peut être ajouté que si le prévenu dont l'indigence est constatée, conformément à ce qui a été dit ci-avant relativement à l'assistance judiciaire, demande l'assistance d'un avocat, trois jours au moins avant celui fixé pour l'audience, sa requête est transmise par le président au délégué du bureau d'aide juridique, et par les soins de celui-ci, un défenseur lui est désigné. Si l'affaire est en instruction, la demande peut être adressée au juge d'instruction à partir du premier interrogatoire. Elle est immédiatement transmise au délégué du bureau d'aide juridique. Si le prévenu ou l'inculpé ne parle aucune des langues nationales, le bureau d'aide juridique désigne un défenseur connaissant la langue du prévenu ou de l'inculpé ou une autre langue que celui-ci connaît. A défaut de pouvoir y satisfaire, le bureau d'aide juridique adjoint à l'avocat en vue de lui permettre de préparer la défense du prévenu ou de l'inculpé, un interprète dont les émoluments sont pris en charge par l'Etat, à concurrence, au maximum d'une vacation de trois heures (Code d'instruction criminelle, article 184bis).</p>
<b>Cyprus</b>	<p>(a) According to Article 11(4) of the Constitution, every person arrested shall be informed at the time of his arrest, in a language which he understands, of the reasons of his arrest, while in Article 30(3)(e) it is provided that every person has the right to have free assistance of an interpreter, if he cannot understand or speak the language used in court. Thus, the court is obliged to designate an interpreter, who will translate into a language understood by the suspect all words of each relevant document. Article 65(I) of the Criminal Procedures Rules (Cap.155) is emanating from the aforesaid constitutional provisions, since according to this article:</p> <p>“Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language which he understands.”</p> <p>(b) Regarding suspects who are held for questioning at the police station, there exists a scheme for emergency linguistic assistance, according to which qualified police interpreters are called to translate into a language understood by the suspect. The languages covered by this</p>

	<p>scheme are English, Russian, Turkish and Arabic. In case of languages not covered by the aforementioned scheme, external translators shall be called to offer their assistance.</p> <p>(c) Concerning the recruitment of translators/ interpreters working in police stations, the situation is the same as it has been described In 6(b) of this questionnaire. Regarding translators or interpreters working in courts, first they shall be pre-approved by the Registrar of the Court (this will depend on whether their qualifications shown in their cvs fulfill the relevant legal requirements) and then they shall be approved by the Court. In addition to that, in article 65(3) of the Criminal Procedure Rules (Cap 155) it is provided that "the Court may test in such manner as it may think fit the ability of the interpreter and may administer to him such oath as it may think fit that be well and carry out the interpretation."</p> <p>(d) The interviews and the interpretation of questions and replies are written down. The Criminal Procedure Rules provide for a system to verify the quality and accuracy of the translation/interpretation: according to article 65(3), the Court may test the ability of the interpreter. (see question 6(c) above.)</p> <p>(e) The same as 6(d) above.</p>
<b>Czech Republic</b>	<p>(a) Agencies involved in criminal proceedings conduct the proceedings and make their decisions in the Czech language. Every person stating that he/she does not know how to speak Czech is entitled to use his/her native language or such language that he/she states to know before the agencies involved in criminal proceedings.</p> <p>If it is necessary to translate the content of a paper, testimony, or another procedural act, or if the defendant utilises the right mentioned in the previous paragraph, translator is included in the proceedings; the same applies if the translator has to be appointed for a person with which one can make understanding only in sign language. The translator may be at the same time the recording clerk. If the defendant has not mentioned the language which he/she knows, or if he/she mentions a language or a dialect which is not his/her native language or the official language of the country the defendant is the citizen of, and no person has been recorded for such language or dialect in the List of Translators, the agency involved in the criminal proceedings appoints the translator for the language of his/her nationality or the official language of the country which he/she is the citizen of. If such person is without any citizenship, the country where he/she has the permanent residential address, or the country of his/her origin, is to be applied.</p> <p>The defendant must be submitted in writing the translated resolution on commencement of the criminal prosecution, resolution of the detention, accusation, proposal for punishment, verdict, penal order, decision on appeal, and on conditional suspension of the criminal prosecution; this does not apply if the defendant states after having been informed that he/she does not require any such translation. If such decision concerns more defendants, the defendant gets translated only that portion of the decision affecting the defendant if it may be separated from the other statements of the decision and the grounds of justification thereof.</p> <p>Translation of the decision and its delivery is ensured by the agency involved in the criminal proceedings the decision of which is concerned.</p> <p>(b) No, there doesn't exist any scheme for emergency linguistic assistance on a 24-hour basis for suspects being held for questioning at the police station.</p> <p>(c) There exists a scheme for recruiting qualified translators/interpreters to participate in the criminal proceedings in general. There is functioning</p>

	<p>a national register of legal translators and interpreters that is administrated by the Ministry of Justice. Only professionals who are registered in this register may act as translators/interpreters in criminal proceedings and may be invited to participate in it. There are specific qualification requirements for becoming sworn translators provided for by Act on Sworn Translators and Experts – Czech nationality, adequate professional knowledge of language, good personal characteristics and consent of concerned translator.</p> <p>(d) See the answer to the question 5.b).</p> <p>Furthermore, it should be added that the record of the testimony of a person is made in Czech even though the interrogated person responds in another language; if the verbatim language of the testimony is significant, the recording clerk or the translator mentions in the record the corresponding part of the testimony in that language, too, which this person has used for his/her testimony.</p> <p>As regards the second part of the question, all translators enlisted in the List of Translators had to take a vow to carry out their obligations faithfully. If they do not respect this vow, the agency involved in the criminal proceedings withdraws the concerned translator and appoints a new one. Furthermore, a Criminal Code provides for a criminal offence “False interpretation” in its section 175a.</p> <p>(e) See the answer to the question 6.a).</p> <p>As it has been already mentioned in our answers to the previous questions, the right to translator/interpreter is provided for in the Criminal Proceedings Code and ranks among the basic rights of suspect. Therefore, it must be respected along with other basic procedural rights.</p>
<b>Denmark</b>	<p>(a) If a suspect does not speak Danish a translator shall assist the person during questioning, cf. AJA, section 149. Moreover, it is a general principle of administrative law that persons not speaking Danish shall be assisted by to the extent necessary. In criminal proceedings this also follows from the European Convention on Human Rights, article 5 (2) and 6 (3) (a) and (e), which has been incorporated in Danish law. In cases concerning extradition assistance by an interpreter is also required if necessary according to notice no. 2/2002 for the Director of Public Prosecution.</p> <p>(b) The National Commissioner of Police administers a list of authorised interpreters, who can be contacted at any time of the day, but they have no obligation to assist on a 24-hour basis. The list covers 1850 interpreters representing 140 languages and dialects.</p> <p>(c) The National Commissioner of Police has been authorised by the Ministry of Justice to administer the recruiting and administration of the interpretation-scheme within the area of the Ministry of Justice. The National Commissioner of Police thus administers a list of authorised interpreters, comprising 1850 interpreters representing 140 languages and dialects. The National Commissioner of Police decides on an individual basis, based on a written application in Danish and a personal interview, whether the interpreter can be included on the list of interpreters. It is also decided whether the person shall be entitled to additional compensated as qualified translator.</p> <p>The evaluation of the qualification of applicants focuses on the linguistic capabilities of the applicant. An interpreter must master Danish and his/hers mother tongue both written and orally. In addition, the National Commissioner of Police looks at the personal conduct and morals as well as security issues. Before inclusion on the list of interpreters it is thus examined whether the applicant has a criminal record and a security</p>

	<p>check is made.</p> <p>It is not a requirement that the applicant has completed a linguistic education, since such a requirement would make it impossible within the foreseeable future to have a sufficient number of interpreters available, to handle the large number of interpretation tasks within the field of justice and immigration administration.</p> <p>A large number of the listed interpreters have, however, completed special training as interpreters or other comparable education.</p> <p>Interpreters, who have completed special education, are entitled to additional compensation. An effort is made to include as many licensed interpreters as possible.</p> <p>Complaints about an interpreter can be filed at the National Commissioner of Police, who can decide to strike the person for the list of interpreters.</p> <p>Interpreters who are included on the National Commissioner of Police's list of interpreters are not employed by the Police. They work on a freelance basis and is engaged and compensated for each individual task. The interpreters are, thus, not guaranteed jobs and the degree of usage depends of demand of interpreters in the given language.</p> <p>(d) Systematic tape- and videorecording of interrogations is not practised. Complaints of the quality of the interpretation can, however, be filed to the local police authority who will forward the complaint to the National Commissioner of Police.</p> <p>(e) In the course of the communication with a suspect it is evaluated, whether the suspect needs an interpreter. There is not formal test.</p>
<b>Estonia</b>	<p>(a) The Code of Criminal Procedure (art. 112 para. 1) states that if a person participating in a criminal matter is not proficient in the language in which the investigation is conducted, an interpreter or translator shall be summoned to the investigative activity. Art 228: A judge shall explain the duties of an interpreter or translator to him or her and warn him or her of the liability for refusal to interpret or translate or for a knowingly false interpretation or translation pursuant to § 112 of this Code.</p> <p>(b) No such emergency linguistic assistance exists, but there is always Russian translation guaranteed in every institution.</p> <p>(c) There is no special scheme. The translators are recruited as all other personnel. The required qualifications include high school education and relevant language skills.</p> <p>(d) The interpretation is usually not tape- or video recorded.</p> <p>(e) An interpreter or a translator, or a person proficient in the form of expression of a deaf or mute person shall be warned of his or her liability in the case of refusal to perform his or her duties, and in the case of producing a knowingly false interpretation or translation pursuant to articles 318 or 321 of the Penal Code, and his or her signature shall be obtained thereto.</p>
<b>Finland</b>	<p>(a) A translator/translation is provided on state's expenses on the same basis as legal aid.</p> <p>(b) Yes, each police station has a list of translators/interpreters that can be called for assistance when needed. Languages covered are what ever is needed, sometimes translators have been called in from other countries for less known languages.</p> <p>(c) No official scheme exists, for documentation translation courts and police use private certified translation offices. No special qualifications are required of the interpreters, but the origins of the suspect and translator are taken into account and usually the interpreters used are known in advance.</p>



	<p>(d) Interviews can be videotaped if seen necessary. Normally interviews are taped and written to transcript from the tape. Transcript is given to the interviewed person to be read and signed.</p> <p>(e) See above, translators, legal aid, signature of transcripts etc</p>
<b>France</b>	<p>(a) Si le suspect, durant sa garde à vue ne comprend pas la langue de l'Etat dans lequel les faits lui sont reprochés, il est alors assisté d'un interprète dans tous les actes de la procédure. De même si des pièces doivent lui être présentées pour les nécessités de l'enquête, ces pièces doivent faire l'objet d'une traduction par un interprète.</p> <p>Il n'y a pas de limitation de langue, un des principes posés en matière de garde à vue étant pour la notification des droits, qu'ils doivent être communiqués à la personne gardée à vue dans une langue qu'elle comprend (art 63-1)</p> <p>(b) L'interprétariat est assuré en premier lieu par les interprètes qui sont inscrits sur la liste des experts de la cour d'appel.</p> <p>Toutefois, le code de procédure pénale n'exige pas que l'interprète auquel il est fait recours soit obligatoirement inscrit sur une liste d'experts. Il peut ainsi être fait appel à toute personne compétente qui devant une juridiction devra prêter serment (la prestation de serment n'étant pas prévu dans le cadre de l'enquête)</p> <p>Par ailleurs, le code de procédure pénale a, depuis une loi du 15 novembre 2001 relative à la sécurité quotidienne, légalisé une pratique qui avait été auparavant jugée régulière par les juridictions, à savoir l'interprétariat par téléphone, en particulier pour la notification des droits. Ainsi, dans les cas où les interprètes, inscrits sur la liste des experts, ne peuvent se rendre dans les locaux de police, notamment en raison de l'heure tardive, il est possible d'avoir recours à des structures spécialisées dans ce type de service.</p> <p>Enfin, comme il a été rappelé ci-dessus, il n'y a pas un nombre limitatif de langues, le principe posé notamment pour la notification des droits de la personne gardée à vue étant que ces informations doivent être communiquées à la personne gardée à vue dans une langue qu'elle comprend.</p> <p>(c) La réponse à cette question est liée au point précédent.</p> <p>Les traducteurs interprètes souhaitant être requis par les services de police ou par l'autorité judiciaire peuvent demander à être inscrits sur la liste des experts de la cour de cassation ou sur la liste des experts de la cour d'appel.</p> <p>Comme il a été indiqué ci-dessus, les services d'enquête peuvent également avoir recours à toute personne compétente.</p> <p>(d) Cette question ne se pose que pour les interrogatoires de suspects mineurs. La traduction des questions et des réponses est alors enregistrée (voir supra)</p> <p>La vérification de la qualité et l'exactitude de la traduction s'effectue de manière générale au moment de la relecture par l'interprète des déclarations du gardé à vue, avant que ce dernier ne signe le procès-verbal de ses déclarations.</p> <p>(e) Ainsi qu'il a déjà été indiqué, les suspects ressortissants étrangers sont assistés pendant les interrogatoires et durant les actes de la procédure auxquels ils participent, par un interprète. Dans le cas contraire, l'absence d'interprète entraînerait la nullité de l'acte accompli ou l'irrégularité de la décision qui condamnerait la personne.</p>
<b>Germany</b>	<p>(a) Given the close connection between this question and the one in letter (e), the following comments are also significant.</p> <p>In principle, the <i>ex officio</i> duty to investigate the offence requires access</p>

	<p>to an interpreter/translator.</p> <p>Pursuant to No 181 paragraph 1 of the Guidelines for criminal proceedings and summary proceedings concerning administrative penalties [Richtlinien für das Strafverfahren und das Bußgeldverfahren, RiStBV], in connection with the first examination of a foreign national whether the defendant has an adequate command of German must be recorded such that there is no need to engage an interpreter.</p> <p>Pursuant to No 181 paragraph 2 RiStBV, summonses, warrants of arrest, fixed penalty orders, charge sheets and other substantive judicial decisions issued to foreign nationals who do not have an adequate command of German shall be translated into a language which they understand. There are no particular time limits for this; given that from the outset the documents are to be made available to foreign nationals translated into a language they understand, i.e. at the same time as would apply to a defendant with a command of German, there is also no need for this to be specified.</p> <p>Pursuant to Section 185 of the Constitution of Courts Act [Gerichtsverfassungsgesetz, GVG], the following provisions are generally applicable: where proceedings involve persons who do not have an adequate command of German, an interpreter shall be engaged. No secondary record is kept in the foreign language; however, statements and explanations in the foreign language are to be entered in the record or in an annex in the foreign language, if and to the extent that the judge considers this necessary with respect to the importance of the case. Where appropriate, a translation authenticated by the interpreter should be appended to the record. The services of an interpreter may only be dispensed with if all the persons involved have a command of the foreign language concerned. Pronouncements of decisions shall always be translated by an interpreter for foreign nationals who do not have an adequate command of German.</p> <p>Pursuant to Section 259 paragraph 1 StPO, a defendant who does not have an adequate command of the language of the court shall be informed by an interpreter at least of the applications made in the closing speeches by the public prosecution and by defence counsel. The defendant's own statements must always be translated in full. For the remainder, the presiding judge has the discretion to engage the interpreter to provide a complete word-by-word interpretation of the closing speeches or a condensed summary of the contents thereof.</p> <p>If the person concerned does not have an adequate command of German, the instructions concerning right of appeal issued <u>verbally</u> shall be translated by the interpreter. An application for <u>written</u> instructions in a language understood by the foreign national may be accepted in cases where such instructions serve to safeguard a fair hearing.</p> <p>(b) There is no statutory regulation on this point. However, in many regions, there is no problem in engaging the services of an interpreter within twenty-four hours, thanks to the supply of suitably qualified interpreters. The competent bodies have lists of interpreters and translators who can be called on at short notice. There is no restriction in terms of the languages available in this respect.</p> <p>(c) The interpreter or translator usually works on the same terms as an externally engaged expert. Section 191 GVG further provides that the provisions governing disqualification and rejection of experts shall also apply to interpreters and translators.</p> <p>Pursuant to Section 189 paragraph 1 GVG, the interpreter shall take an oath or an affirmation that he will convey the material faithfully and</p>
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	<p>conscientiously. It is possible for interpreters to take a general oath for conveyances of the type in question; interpreters who have done so can then invoke this oath in specific proceedings (Section 189 paragraph GVG).</p> <p>(d) In principle, there are no special provisions in this respect. The general regulations governing recording of the interview on tape or video are therefore applicable; see the comments relating to Question 5) letter (b) in this respect.</p> <p>(e) See the response to letter (a).</p>
<b>Greece</b>	<p>Article 233 of the CCrP stipulates that an interpreter will be appointed when the accused does not have 'sufficient' knowledge of Greek. The criterion of sufficiency is, as it seems, determined by the authority conducting the investigation, thus giving rise as to the overall efficiency of the CCrP provision. It is understood that the same provision is applicable in cases where the appointment of a translator is required, while a sufficient time limit for the translation of relevant documents will be granted.</p> <p>Again, as in question 2b, no data are readily available.</p> <p>As above.</p> <p>See above under 5b.</p> <p>(e) No special mechanisms are known to exist, other than the ones described above.</p>
<b>Hungary</b>	<p>(a) In case the person is not familiar with the language, an interpreter shall be provided during the procedure. The Act on Criminal Procedure provides for the right to use one's mother tongue, and also for the claim to an interpreter. The essence of these rules is that during the criminal procedure everybody can use his mother tongue in written and also in oral form, also other regional or minority language. If the Hungarian language is unknown to him/her, he/she can also use another language that he/she knows.</p> <p>According to the law, the court, the prosecutor or the investigation authority has to provide for the translation of decisions and other official documents.</p> <p>The costs arising from the usage of the mother tongue or other minority or regional language spoken by the suspect are always paid from state funds.</p> <p>(b) No. However, all investigating authorities have a special database and are able to appoint interpreters who are available 24 hours a day. The head of the In-Attendance Unit of the National Police Service ordered the establishment of a nationally accessible database of interpreters speaking rare languages. Failing to find a suitable interpreter, the interpretation can be provided by anyone who is capable of doing so, but only if no official interpreter is available.</p> <p>(c) The translators and interpreters are not employed by the investigating authority or the court, therefore no such recruitment scheme exist. In Budapest, a public authority founded for this purpose translates all written documents and provides interpretation. The right to translate official documents is also granted for notaries and consuls. As regards to areas outside Budapest, the national director of the police service ordered the setting up of a list in each police department of the country; the list contains persons who obtained an official interpreter identification card issued by the notary of the municipality. Interpreters and translators has to hold at least an undergraduate degree in order to be admitted to the</p>

	<p>specialised training programme of at least two semesters. Only those who have completed successfully the training programme can request the interpreter/translator identification card from the notary of the municipality.</p> <p>(d) The suspect has the right to initiate that the interview be tape-/video recorded, it shall be ordered by the prosecutor or the investigative authority if the costs of it are paid in advance.</p> <p>(e) Legal assistance is compulsory. Also, the authority has to ask through the interpreter explicitly whether the suspect has understood the accusations for instance.</p>
<b>Ireland</b>	<p>Provision is made for the engagement of interpreters (i) whenever considered necessary by the Garda Síochána (Police) for the purpose of their investigations and (ii) whenever a detained person has to be, as a matter of law, advised of certain matters. This includes a person's right to consult a solicitor. The interpreter is paid for out of State funds through the police budget. Arrangements are made on a local basis and the arrangements are not restricted to any particular group of languages. There are no specific qualifications set by a central body. The Custody Regulations, 1987 provides for a procedure which must be followed in the event that a foreign national is arrested.</p> <p>Interpreters/translators may be engaged by solicitors operating under the provisions of the Criminal Justice (Legal Aid) Act, 1962, in the defence of a client to whom a certificate of free legal aid has been granted. Fees are disbursed under the Criminal Legal Aid Scheme.</p> <p>Interpreting services may also be availed of under the direction of a Judge or the court. In this case, fees would be disbursed by the Courts Service. The requirements of fairness and natural justice which are founded in the fundamental rights provisions of the Constitution also safeguard the position of arrested persons in this area.</p>
<b>Italy</b>	<p>(a) The Italian Code of Criminal Procedure contains the following provisions in this respect:</p> <p>Article 143 CCP, <i>Appointment of an interpreter</i>, states: “1. A suspect who does not understand Italian shall be entitled to free assistance from an interpreter in order to understand the charge against him and to follow the proceedings in which he is involved. Italian citizens shall be presumed to understand Italian unless otherwise proven. - 2. In addition to the cases set out in paragraph 1 and Article 119, the prosecuting authority shall appoint an interpreter when a written document in a foreign language or a dialect that is not readily intelligible requires translation or when a person who is willing or required to make a statement does not understand Italian. The statement may also be made in writing and, in this case, it shall be annexed to the record together with the translation made by the interpreter. - 3. An interpreter shall also be appointed when the judge, public prosecutor or criminal police officer personally understands the language or dialect to be interpreted. - 4. Provision of interpreting services shall be mandatory”.</p> <p>Article 109 CCP, <i>Language of proceedings</i>, states: “1. Criminal proceedings shall be conducted in Italian. - 2. In respect of judicial authorities having first-degree or appeal jurisdiction over a territory in which there is a recognised linguistic minority, an Italian citizen belonging to that minority may, upon request, be questioned or examined in his language of habitual use and the record of such questioning or examination shall also be drawn up in that language. Procedural documents addressed to him shall, upon request, also be translated into</p>

	<p>that language. This shall not prejudice any other rights set out in special laws and international conventions. - 3. Failure to comply with the provisions of this article shall render proceedings invalid”.</p> <p>(b) It is mandatory to appoint an interpreter at any stage of proceedings, including preliminary investigations, and whatever the authority involved (court, public prosecutor or criminal police). At present there is no institutional scheme for linguistic assistance on a 24-hour basis, but such assistance is nevertheless provided by calling on the services of those interpreters registered on the lists drawn up by each court office.</p> <p>(c) The prosecuting authority appoints the interpreter from the appropriate list of persons possessing the necessary university qualification drawn up by each court office. At present Italy has no professional register of court and legal interpreters (or of interpreters in general).</p> <p>Interpreters may be disqualified on grounds of incapacity or incompatibility. Article 144 CCP states that: “1. Interpreting services may not, on pain of nullity, be provided by: <i>a)</i> minors, debarred persons, incapacitated persons and persons suffering from mental infirmity; <i>b)</i> persons debarred, even temporarily, from public office, or persons debarred or suspended from the practice of a profession or a trade; <i>c)</i> persons subject to personal safety measures or preventive measures; <i>d)</i> persons who may not be called as witnesses or who are entitled not to give evidence, or persons called as witnesses or experts or appointed as technical advisers in the same or in allied proceedings. However, in the case set out in Article 119, a close relative of a deaf, mute or deaf-mute person may act as interpreter”.</p> <p>There are also grounds for objection to and refusal by interpreters. Interpreters (Article 145 CCP) may be objected to on the grounds set out in Article 144, by private parties, and, in connection with measures taken or arranged for by the courts, by the public prosecutor as well. When there are grounds for objection, moreover, even if they have not been put forward, or there are serious grounds for refusal, it is compulsory for interpreters to declare them.</p> <p>As regards the methods by which the task is conferred, the prosecuting authority must verify the identity of the interpreter and ask him whether any of the criteria of incapacity or incompatibility apply to him, then caution him that he must perform the service to the best of his abilities and keep all matters confidential, and then invite him to perform the task (Article 146 CCP).</p> <p>The vocational qualifications possessed by staff of the judicial administration include that of “linguistic expert”, although few such employees currently possess this qualification.</p> <p>(d) Proceedings during which the services of an interpreter are called upon do not have to be recorded in any particular way. There are no formal procedures for verifying the quality of the work of interpreters and translators.</p> <p>(e) The mechanisms ensuring protection for foreign suspects as listed under (a), i.e. interpreting assistance and translation of documents, apply generally to any action forming part of criminal proceedings involving documents addressed to the suspect and any measures at which the suspect has to be present (for instance notification of charges during questioning, summons, sentencing enforcement order).</p>
<b>Latvia</b>	<p>(a) (b) (e) The suspect and the accused (without reference of being Latvian or foreign national) have right to give testimonies and explanations in their native language or enjoy the interpreter/translator</p>

	<p>services. So, a person, involved in prosecution, but not knowing the procedural language, is guaranteed by the court, judge, prosecutor and preliminary investigation institution a possibility to handle applications, give testimonies, familiarize with all criminal case materials as well as to appear before the trial exactly in this language the person knows with the assistance of a translator. Procedural documents, served out to the accused, who does not know the procedural language (in Latvia that is state language – latvian language), are to be translated into the language these persons know. For example, if the indictment is written in the language the accused does not know, prosecutor is obliged to annex a translation of it into native language or into the language the accused knows. Questioning a deaf or dumb person, there is invited a person who does understand the deaf and dumb signs.</p> <p>In accordance with p.135 of latvian CPC, an interpreter is a person, which knows necessary for translating languages and which is invited by the preliminary investigation institution, prosecutor or the court. The translator's duty is to arrive on the invitation and fully and precisely make the translation assigned. The translator can not participate in the procedure if he is not competent or:</p> <ul style="list-style-type: none"> <li>• he is a relative to any of the judges, included in the court for indictable offence;</li> <li>• he is a suffered in the indictable offence, civil plaintiff, civil defendant, those person's relative or spouse;</li> <li>• he is participated in this case as the suffered, witness, expert, specialist, preliminary investigator, prosecutor, defender, legal representative of the accused, representative of the suffered, civil plaintiff, civil defendant;</li> <li>• he himself, his relatives or spouse directly or indirectly are interested in the case.</li> </ul> <p>The translator is considered as competent, if he does know enough the rendered languages, understands judicial meaning.</p> <p>For scienter wrongfull translation, denial from the translation the translator is called to criminal liability.</p> <p>There are employed in the staff of the Prosecution Office of LR translators, performing translations from/into latvian, english, german and russian languages and which have professional certificates. When a translator is engaged a testing period of 3 months is appointed for him. During this time the Prosecution Office has to find the translator's scope of knowledge and in case his qualifications do not meet nominated requirements the job contract with such person is not extended.</p> <p>(a) The LR Prosecution Office on a tender conditions has chosen an entrepreneurial society, providing translation services. The Prosecution Office agreement with this company stipulates, that except, included in the agreement 36 foreign languages (most often used), the company has to secure translation services with any other language, which is not given in the agreement. In cases assistance of a translator is needed immediately in any of Latvian regions, possibility to invite a translator does exist at a place (if there is in this location a specific foreign language translator). Hence, the Prosecution Office secures the suspect or the accused the translator assistance and up to this moment there were not in the prosecution practice occasions, when it was impossible to assure in 24 hours the suspect or accused assistance of a translator, if he applied for that.</p>
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	<p>(b) In accordance with p.85.1 of Latvian CPC the procedural advancer can fixate the consecution of investigation activities in audio- video-records. In these records are fixated also the translator actions in a specific investigation action, because the entire investigation consecution is to be fixated. It is not allowed to make a partial investigation activity's record.</p> <p>For the translation quality and precisiness is liable the translator himself. Moreover the suspect and the accused can define the translator expertise and doubting it can declare denial to the translator. In pre-trial investigation the preliminary investigator or the prosecutor resolve the translator denying question.</p> <p>(b) According to the Article 151 of the Latvian Code of the Criminal Procedure, a person can be interviewed in daytime with only exception of emergency cases.</p> <p>The linguistic assistance at the police station usually is given by the police officers and it covers English, German, and French. If there is a necessity to use other language than mentioned before the police asks for assistance embassies situated in Latvia.</p> <p>(e) According to the Article 124 of the Latvian Code of Criminal Procedure, before the interview the investigator is obliged to inform the suspect about his rights and about the criminal offence he is accused of. The fact that the suspect has been informed is written in the protocol that afterwards is signed by the suspect.</p> <p>According to the Article 78 of the Latvian Code of the Criminal Procedure, in case of detention, investigator, prosecutor of court immediately inform about it the working place, educational institution and family of the suspect and the accused. If the suspect or the accused is the foreign national then the duplicate of the decision on the detention is being sent to the Ministry of Foreign Affairs for further forwarding it to the relevant embassy or consulate.</p>
<b>Lithuania</b>	<p>a) Anybody who is detained or arrested must immediately be informed in a language he understands of the reason for his detention or arrest. Anybody suspected or accused of having committed a criminal act is entitled to be informed quickly and in detail in a language he understands of the nature or grounds of the accusation and to have sufficient time and opportunities to prepare a defence (Article 44 of the Code of Criminal Procedure).</p> <p>During criminal proceedings the suspect it entitled to use the services of an interpreter/translator free-of-charge if he does not understand or speak Lithuanian, i.e. the language in which criminal proceedings are conducted in Lithuania. Article 45 of the Code of Criminal Procedure states that the court, public prosecutor and pre-trial investigation official must explain the right to use the services of an interpreter/translator free-of-charge and ensure that the suspect is able to avail himself of it. In practice, the suspect's right to free interpreting/translation services means that the interpreter/translator takes part in the proceedings of the suspect or other proceedings involving the suspect to interpret what is said between the languages of the participants or translates the documents of the case of which the suspect is informed or wishes to be informed.</p> <p>The right for participants in criminal proceedings who do not have a knowledge of Lithuanian to make statements, give evidence and explanations, submit applications and appeals, and speak his native or another known language in the court is guaranteed. In all of these cases, and when examining the material of the case, participants in the</p>

	<p>proceedings are entitled to use the services of an interpreter/translator. The documents of the case which are served on the suspect, accused or convicted person and to other participants in the proceedings must be translated into their native language or another known language (Article 8 of the Code of Criminal Procedure).</p> <p>b) Answered in question 5 and 6a). There are no special provisions for emergency linguistic assistance when a suspect is being held for questioning at the police station.</p> <p>c) An interpreter/translator is a person who knows the language required for translation or understands deaf or dumb sign language invited by the pre-trial investigation official, the public prosecutor, the pre-trial investigation judge or the court to take part in proceedings in accordance with the procedure laid down by the Code of Criminal Procedure (Article 8). If there are no grounds for objection, this may be a person working at the police station. No special requirements are applied to interpreters/translators working in police stations.</p> <p>d) Sound and video recordings may be made of proceedings (Article 179 of the Code of Criminal Procedure). When a sound or video recording is made of the questioning of a suspect in the presence of an interpreter, the translations of the questions and answers are also recorded. Although no system has been established for checking the accuracy and correctness of a translation, whenever a sound or video recording of the translation is made it is possible to invite a language specialist to listen to or watch the recording. Such a specialist could determine whether the translation was accurate and correct. If no sound or video recording is made when a suspect is questioned in the presence of an interpreter, there is not possibility of checking whether the translation is accurate or correct. Lack of competence on the part of an interpreter/translator is one of the grounds for dismissing him (Article 58 of the Code of Criminal Procedure).</p> <p>e) The only way of ensuring that a suspect who is not of Lithuanian nationality is able to understand proceedings taking place in Lithuanian is to invite an interpreter to interpret from Lithuanian into the suspect's native language and <i>vice versa</i>. Article 8 of the Code of Criminal Procedure stipulates that a suspect is guaranteed the right to make statements, give evidence and explanations, submit applications and appeals, and speak his native or another known language. In all these cases, and also when examining the files of the case, the suspect is entitled to make use of interpreting/translation services.</p>
<b>Luxembourg</b>	<p>a) Oui. L'officier de police judiciaire peut avoir recours à toute personne qualifiée susceptible d'apporter son concours à la justice. L'inculpé pourra procéder à la lecture des procès-verbaux dressés ou pourra demander que lecture lui en soit faite et que ses observations soient consignées.</p> <p>b) Il n'existe pas de système d'urgence disponible 24 heures sur 24 ; il est fait usage de la liste des traducteurs assermentés.</p> <p>c) Oui, il existe un tel système. La loi du 7 juillet 1971 portant en matière répressive et administrative, institution d'experts, de traducteurs et d'interprètes assermentés régit la matière. Ces experts sont désignés par le Ministre de la Justice. Ils sont soumis à la surveillance du Procureur d'Etat. Les qualifications demandées aux experts varient selon la branche choisie, mais en ce qui concerne la branche de la traduction le Ministre de la Justice exige une qualification diplômée.</p> <p>d) Non.</p> <p>e) L'article 39 dispose que le personne retenue est informée</p>



	immédiatement de son droit de contacter une personne de son choix, un médecin pouvant l'examiner ainsi qu'un conseil, et ceci dans une langue qu'elle comprend. L'avocat et le traducteur assurent que la personne retenue comprenne la procédure.
<b>Malta</b>	<p>(a) Appointment of interpreter.</p> <p>(b) In practice, yes.</p> <p>(c) No, but the police have their own list of interpreters available.</p> <p>(d) Yes.</p> <p>(e) Ultimately, Court control.</p>
<b>The Netherlands</b>	<p>a. If the suspect does not understand the Dutch language the examining judge can appoint an interpreter (article 191). Appointing an interpreter is not an obligation to the examining judge. During the court session (including the verdict) the suspect has the right to an interpreter (article 275 and 325). During the interrogation of the police, the police is responsible for providing an interpreter.</p> <p>If a suspect does not understand the Dutch language, the summons will be translated in writing and on request. The other documents will be in the Dutch language, but the lawyer or an interpreter can translate the essence.</p> <p>b. There is no scheme for emergency linguistic assistance. A suspect must be questioned by the police in a language he understands. If the suspect is not questioned immediately he must be informed with the reason for his arrest in a language he understands as soon as possible.</p> <p>If the suspect is arrested only to be questioned and there is no interpreter available within six hours, the questioning can take place with the help of the interpreter by telephone.</p> <p>c. The Ministry of Justice has started to register interpreters. This registration must lead to a record of certified interpreters in 2005. An independent quality agency will be in charge of the record and is responsible for the development of a rule for complaints and for guarding the quality of the interpreters (through permanently education and fraternal testing).</p> <p>d. It is not the norm to videotape or tape the interviews. There is no system for verification.</p> <p>e. The Ministry of Justice has brochures with explanation of the procedure in a number of languages.</p>
<b>Poland</b>	<p>(a) Article 204 (1) of the Polish Code of Criminal Procedure provides for the obligation to summon the interpreter/translator if the person to be examined is without a command of Polish.</p> <p>An interpreter shall also be summoned whenever it is necessary, to translate into Polish, a document written in a foreign language, or to translate a Polish document into a foreign language or to acquaint the accused with the contents of the evidence examined.</p> <p>According to Article 72 of the Polish Code of Criminal Procedure the accused, who is without a command of Polish receives the following documents along with their translation:</p> <ul style="list-style-type: none"> <li>- order on presentation of charges, their supplementation or change and</li> <li>- judgements subject to an appeal or ending the proceeding.</li> </ul> <p>(b) and (c) There are no regulations establishing the scheme for emergency linguistic assistance on 24-hour basis. An interpreter is called just after the suspect is recognised as the person having no command of the Polish language. There is no provision instituting working hours of interpreters. They appear on each summons (given usually by the phone) of the persons who conducts the questioning.</p> <p>It is not possible to examine any person, who does not know Polish,</p>

	<p>without the presence of the interpreter. The prosecutor gives an order to appoint the interpreter immediately after he deems it necessary. Each prosecutor has access to the list of interpreters who are sworn interpreters. The interpreter has to fulfil the following conditions to be drawn to the list:</p> <ol style="list-style-type: none"> <li>1) to have Polish nationality<sup>104</sup>, to fully enjoy civil and civic rights,</li> <li>2) to be 25 years old at least,</li> <li>3) to have appropriate command of Polish and foreign language and interpretation/ translation skills,</li> <li>4) to guarantee the proper fulfilment of duties as translator</li> <li>5) to hold a university degree</li> <li>6) to agree to act as interpreter</li> </ol> <p>Legal provisions do not specify the system of particular specialisation, including court specialisation, of preparation for interpreters to work in the courts. The interpretation/translation skills shall be confirmed by the diploma certifying the title of master of Philology or master of applied linguistics or, if the Minister of Justice agrees, by any other diploma, certificate or in any other way.</p> <p>The interpreter specialising in interpretation for deaf persons should be the person who is 21 years old at least and have certificate of qualified interpreter of the II degree or the title of expert in this language issued by the Polish Deaf Persons Union.</p> <p><b>(d)</b> Questioning with the participation of the interpreter is considered an ordinary one, thus in this case Article 147 of the Polish Code of Criminal Procedure on its recording, is applicable.</p> <p>See point 5 b.</p> <p>According to the Regulation of the Minister of Justice on the court's appointed experts and sworn interpreters the Chief Justice of the court or a court clerk authorised by him have a right to check the work of the interpreter by:</p> <ol style="list-style-type: none"> <li>1) checking the quality of interpretation with the assistance of experts in a given language,</li> <li>2) looking into the files and books of the interpreter,</li> <li>3) requiring explanations from the interpreter in matters connected with his performance of the duties.</li> </ol> <p><b>(e)</b> Immediately after a foreigner is recognised as the person having no command of the Polish language and no possibility to communicate with the persons conducting the proceedings, the prosecutor issues a decision on the appointment of the interpreter. The interpreter is present during all the actions conducting in the legal proceedings under the presence of the suspect.</p>
<b>Portugal</b>	<p>(a) Portuguese law insists on the use of the Portuguese language in proceedings whether written, or oral. Proceedings not in Portuguese are null. If someone who must be involved in proceedings does not know Portuguese, or cannot manage in Portuguese, a suitable interpreter is appointed, free of cost, even if the entity presiding over the action, or any of the participants in the proceedings, knows the language spoken by that person. Similarly an interpreter is called when it is necessary to translate a document in a foreign language, which is not accompanied by an authenticated translation (Article 92 of the Portuguese Criminal Code).</p> <p>(b) No, which does not mean that the existing interpreters are not used, when necessary, for the effects of compliance with criminal law, as</p>

<sup>104</sup> This requirement will be abolished as from the first day of Poland's membership in the EU.

	<p>referred to above.</p> <p>(c) The law provides that a suitable interpreter be appointed. The assessment of the interpreter is undertaken by the appropriate judicial authority. There is no system of qualifications of translators defined by the Justice Ministry. The judicial authorities refer to the lists of interpreters that exist at some Courts or to interpreters and translators approved by embassies.</p> <p>The Ministry of Justice is currently undertaking a study in the sphere of a project for a diploma for legal translation and sworn interpreting.</p> <p>(d) For a judgment hearing, Article 363 of the Portuguese Criminal Code provides that statements given orally be documented on a record sheet, when the Court has a stenographer present or other suitable, technical means of ensuring the complete reproduction of the same, as well as in cases when the law expressly imposes a recording. Therefore there is the possibility of use of audio and video recordings.</p> <p>There is no system of verification of the accuracy and quality of translation.</p> <p>(e) This assessment is for the judicial authorities.</p>
<b>Slovak Republic</b>	<p>By an order of the director of the Regional Police Force Directory in Bratislava the non-stop emergency for their police officers was experimentally established for the purpose of basic linguistic assistance on a 24-hour basis. The task of these officers is to interpret the announcements about suspicion of criminal behavior or for other demands from the strangers. It is covered by two languages: English and German. Basic interpretation serves the purpose of the orientation of the policemen in the district divisions of the Police Force, to be able to decide the next steps to be taken.</p> <p>For questioning of the persons involved in an action executed according to criminal law regulations it is necessary to invite the official interpreters included in a list of the court interpreters which is at every regional court. The fact that those interpreters are not the members of the police force makes all the procedure much longer. Among the languages which are covered by those court interpreters are: English, German, Arabian, Bulgarian, Czech, Croatian, Chinese, French, Greek, Hebrew, Dutch, Indonesian, Latin, Hungarian, Norwegian, Polish, Portuguese, sign language, Romanian, Russian, Spanish, Serbian, Swedish, Slovenian, Italian, Ukrainian, Vietnamese .</p>
<b>Spain</b>	<p>(a) If the suspect does not understand Spanish an interpreter will be appointed to translate questions and answers (Art. 440 LECR). If it is impossible to provide an interpreter for the language spoken by the accused, the questions are sent in writing to the Language Interpretation Office of the Spanish Ministry of Foreign Affairs, to be translated into the language spoken by the accused, and his answers will be sent for translation to the aforementioned Office of Foreign Affairs.</p> <p>(b) The world's most widespread languages are covered on a 24-hour basis (English, French, German and Arabic).</p> <p>(c) There is a scheme for signing permanent contracts with qualified translators both at courts and at police stations where suspects who do not know Spanish are questioned.</p> <p>(d) There is no tape- or video- recording of either the questions or the interpretation of the questions or answers.</p> <p>The quality and accuracy of the interpretation/translation is guaranteed by the high level of knowledge of the language required from the translators and interpreters, who are selected by open public tender.</p>
<b>Sweden</b>	<p>(a) When there is risk of confusion of languages, an interpreter assists in</p>

	<p>the interview.</p> <p>There are no special Swedish regulations regarding interpretation of an interview with the suspect during the preliminary investigation. However, chapter 5 section 6 of the Code of Judicial Procedure, which deals with the trial, is considered to be applicable also during the preliminary investigation. According to this section, if a person who shall be heard by the court is incapable of understanding and speaking Swedish, an interpreter may be engaged to assist the court. A person whose interest in the matter at issue, or whose relationship to any of the parties, could be considered to cast doubt on that person's reliability, may not be engaged as an interpreter.</p> <p>There are acts protecting minority languages that give inhabitants in certain regions in Sweden a right to use their native language vis-à-vis e.g. police authorities. The languages in question are Sami and Finnish, including Meän Kieli.</p> <p>(b) Each police authority has its own administrative routine for appointing interpreters, and has a scheme for linguistic assistance to match its need. Through an interpreter agency it is possible to contact an interpreter on a 24-hour basis.</p> <p>(c) There is no such scheme and there are no specific qualifications officially recognised for interpreters assisting in a trial or a preliminary investigation. However, The Legal, Financial and Administrative Services Agency, authorize interpreters and translators. When possible, authorities strive to use interpreters that are authorized, preferably in the judicial field.</p> <p>(d) See above, answer to question 5 a. The quality of an interpretation and a translation is guaranteed by making sure the interpreter or translator for the assignment is competent. The officer conducting the interview ensures that the suspect understands the statement written. There is no system for routinely verifying the quality after the interpretation or translation.</p> <p>(e) See 6(a)–(d) above.</p>
<b>United Kingdom</b>	<p><u>England &amp; Wales</u></p> <p>(a) See 1c) above – Vulnerable groups – foreign languages</p> <p>(b) Individual police forces are responsible for identifying interpretation services to fulfil the requirements under PACE.</p> <p>(c) Responsibility for identifying suitable interpreters rests with the police force and court concerned. Every interpreter working in the criminal justice system should be selected from the National Register of Public Service Interpreters (NRPSI) or the Council for the Advancement and Communication with Deaf People (CACDP) Directory. If it is not possible to select an interpreter from the NRPSI or CACDP Directory, the interpreter may be chosen from some other recognised list. However, any interpreter selected from another list must meet the standards at least equal to those required for entry o the NRPSI or CACDP Directory in terms of academic qualifications or proven experience of interpreting within the criminal justice system and professional accountability.</p> <p>(d) The interviewing officer ensures that the interpreter makes a note of the interview at the time in the language of the person being interviewed for use in the event of his being called to give evidence, and certifies its accuracy. Sufficient time is allowed for the interpreter to make a note of each question and answer after each has been put or given and interpreted. The person is given an opportunity to read it or have it read to him and sign it as correct or to indicate the respects in which he considers it inaccurate. If the interview is tape-recorded it must be done within the</p>

	<p>requirements of PACE.</p> <p>(e) The main criminal justice agencies issued a National Agreement on the arrangement for the attendance of interpreters in investigations and proceedings within the Criminal Justice System in 1997, revised in 2001. The Police, or other appropriate investigating agency, will arrange at public expense for an interpreter for any part of the investigation whilst they are in custody in accordance with PACE. A solicitor who is acting for an accused in receipt of publicly funded legal assistance, and who requires an interpreter to take instructions can claim the expenses of the interpreter in their claim for costs from public funds. The Court appoints (at public expense) the appropriate language interpreter or lip speaker to assist at trial. In all cases, Article 6 of the European Convention on Human Rights requires that an interpreter be fully competent for the task assigned.</p> <p><u>Scotland</u></p> <p>(a) All Scottish Police forces have access to an interpreting service on a 24-hour, 365 days a year basis.</p> <p>(b) All Scottish Police forces have access to an interpreting service on a 24-hour, 365 days a year basis.</p> <p>(c) Scottish Police forces have a variety of differing arrangements for the provision of translating and interpreting services. Some forces have either Service Level Agreements with providers or are in contract or arranging contracts with providers. Some forces require interpreters to be trained to the Diploma in Public Service Interpreting (Scottish Legal Option) level.</p> <p>(d) The tape and video recording of interviews is dependent on the availability of facilities and officers trained in the techniques.</p> <p>(e) Each police force has a procedure manual detailing procedures for interviewing foreign nationals.</p>
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**Pre-trial**

<p><b>Question 7</b></p>	<p><b>7) Evidence</b></p> <p>(a) <b>What rules exist to prevent the investigating authorities improperly obtaining evidence?</b></p> <p>(b) <b>What is the extent of prosecution disclosure? Are there any exemptions from the prosecution's duty of disclosure (e.g. for public interest reasons or to protect a vulnerable witness)?</b></p> <p>(c) <b>If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</b></p>
<p><b>Austria</b></p>	<p>(a) The Austrian Code of Criminal Procedure contains a number of constraints on the ways in which evidence is obtained and used to ensure the legality of the recorded evidence. As a rule the use of evidence which is obtained unlawfully will put a verdict in jeopardy (i.e. acquittal as a result of severe shortcomings in procedure).</p> <p>(b) In court proceedings the defendant is entitled to examine documents. Until an indictment is announced, the examining judge can deny the inspection of individual documents if special circumstances justify a fear that the immediate disclosure of those documents would constitute a threat to the purpose of the investigation (§ 45 paragraph 2 of the Code of Criminal Procedure). If specific facts give grounds for fear that the witness would expose himself or a third party to a serious threat to life, health, physical well-being or freedom if he were to name or provide details of that person or answer questions which allow similar conclusions to be drawn, the examining judge may permit him to refuse to answer such questions. The details in question will then also be omitted from the court records.</p> <p>As Austria's law of criminal procedure assumes that the examining judge will be in charge of the preliminary proceedings, it does not include any provision for the inspection of the public prosecutor's files. In the case of justified legal interest, however, examination of reports on investigations by the security authorities and others which are appended to the court record must be granted, though usually not until the proceedings are complete.</p> <p>An "obligation on the Public Prosecutor's Office to disclose information" is alien to the Austrian law of criminal procedure because of the way in which the preliminary proceedings are directed by the judge.</p> <p>(c) If the defendant does not understand the language of the State or region in which he finds himself accused, what provisions exist for translation of prosecution documents? Is there a time limit to ensure that the defendant has the documents in a language he understands in good time to prepare his defence?</p> <p>Defendants who do not have adequate knowledge of the language of the court, must be granted assistance with translation, if necessary by the provision of an <i>interpreter</i>, provided it is essential to the interests of the administration of justice, especially to maintain the rights of the defence. This applies in particular to hearings, or if a defendant requests assistance with translation in order to examine documents or on the occasion of the making of a court order or an application by the prosecutor, such as an indictment or a petition for a sentence (§ 38a of the Code of Criminal Procedure). For the questioning of a defendant by the examining judge in the preliminary proceedings, § 198 paragraph 3 in conjunction with § 163 of the Code of Criminal Procedure specifies that an interpreter must be</p>

	<p>called upon unless both the examining judge and the clerk of the court have a command of the foreign language. In practice an interpreter will always be called upon if there is any indication that a defendant does not have adequate command of the language of the proceedings.</p> <p>If the defendant has been remanded in custody, the examining judge will inform him of the indictment or a petition for sentence with the assistance of an interpreter. Defendants who are not in custody are at liberty to arrange for the indictment / petition for sentence to be translated by a person of their choice (or – see above – request assistance with translation). In proceedings before courts which include lay judges and juries, defendants will be granted a period of 14 days in which they can arrange for the indictment to be examined for legality by the supreme provincial court by means of an extraordinary appeal (§ 209 of the Code of Criminal Procedure). Only after this period has expired – or, if an appeal has been lodged, once the supreme provincial court has reached a decision – can the main proceedings, which will make a decision as regards guilt and punishment, be arranged and the defendant summoned to attend. In the case of main proceedings before a court with a jury, the defendant must be granted a period of no less than eight days in which to prepare his defence for a hearing, or a period of three days from the delivery of the summons in the case of main proceedings before a court with lay judges, a judge sitting by himself in the provincial court or the district court (§§ 221, 455 paragraph 1, 488 of the Code of Criminal Procedure).</p>
<b>Belgium</b>	<p>(a) Les règles relatives à l'obtention de preuves figurent dans le Code d'Instruction criminelle, plus particulièrement aux chapitres concernant l'information et l'instruction. Ce sont respectivement le procureur du Roi et le juge d'instruction qui veillent à la légalité des moyens de preuve ainsi qu'à la loyauté avec laquelle ils sont rassemblés (article 28bis, § 3, alinéa 2, et article 56, § 1er, alinéa 2, du Code d'Instruction criminelle). Toutefois, en droit belge, la preuve en matière pénale n'est pas réglée de manière systématique. En principe, c'est le système de la liberté de la preuve qui est applicable : la loi ne prévoit pas la valeur de preuve des différentes pièces, c'est le juge qui apprécie de manière souveraine les éléments de preuve qui lui sont soumis et qui, sur cette base, forge « son intime conviction ». En raison de la présomption d'innocence, la charge de la preuve incombe au ministère public. Le fait que la preuve puisse être apportée par tous les moyens possibles ne signifie bien entendu pas qu'elle puisse également être obtenue par tous les moyens. Le juge peut uniquement baser sa conviction sur les données qui lui sont soumises de manière régulière : il doit écarter du dossier répressif les preuves obtenues de manière irrégulière.</p> <p>La catégorie des preuves obtenues de manière irrégulière a été considérablement élargie au fil des ans. Alors qu'auparavant, il était admis que les officiers de police pouvaient faire tout ce qui était nécessaire afin de découvrir la vérité à l'exception des actes qui étaient expressément interdits par la loi ou par un principe juridique général, ce principe figure aujourd'hui parmi les principes garantissant une application correcte de la procédure criminelle, en ce compris les principes de proportionnalité, de légalité, de loyauté et de subsidiarité. On peut citer comme exemples types de preuves obtenues de manière irrégulière :</p> <p>Les preuves nulles : le non-respect des conditions de forme imposées sous peine de nullité (par exemple, un mandat de perquisition nul) ;</p> <p>Les preuves obtenues en commettant un délit (par exemple, une preuve</p>

	<p>obtenue en violant le secret des lettres) ;</p> <p>Les preuves obtenues en violant le droit au respect de la vie privée ;</p> <p>Les preuves obtenues au mépris des droits de la défense (par exemple, la jurisprudence de la CEDH relative aux témoins anonymes, à la provocation, au délai raisonnable) ;</p> <p>Les preuves obtenues au mépris de la dignité humaine.</p> <p>Depuis l'entrée en vigueur de la loi du 12 mars 1998, les pièces de procédure entachées d'irrégularité peuvent déjà être « écartées » du dossier répressif au cours de l'instruction préparatoire. Les juridictions d'instruction sont compétentes pour épurer le dossier répressif de toute irrégularité, omission ou cause de nullité affectant un acte d'instruction ou l'obtention de la preuve (article 131 du Code d'Instruction criminelle). Dans ce cas, elles prononcent la nullité de l'acte qui en est entaché et de tout ou partie de la procédure subséquente. Les pièces déclarées nulles sont ensuite retirées du dossier.</p> <p>b) Le droit belge opère une distinction entre l'information, menée par le ministère public, et l'instruction, placée sous la direction du juge d'instruction. Contrairement à l'instruction, qui est partiellement contradictoire, l'information est intégralement inquisitoire : tous les actes d'enquête se passent en l'absence de l'inculpé et il n'a à aucun moment le droit de consulter le dossier répressif.</p> <p>En revanche, l'inculpé possède ce droit dans le cadre de l'instruction. Lorsque le ministère public requiert un juge d'instruction de mener une instruction, l'inculpé et la partie civile ont le droit de consulter le dossier et de demander des actes d'instruction complémentaires.</p> <p>Ceci ne signifie bien entendu pas que le ministère public n'a aucune obligation en matière de publicité. Les différents actes d'information accomplis par le ministère public sont consignés dans un procès-verbal qui est joint au dossier. Des exceptions à cette obligation sont notamment prévues dans le projet de loi concernant les méthodes particulières de recherche et quelques autres méthodes d'enquête (par exemple, en vue de protéger l'identité d'informateurs ou de fonctionnaires de police sous couverture).</p> <p>c) L'article 22 de la loi précitée du 15 juin 1935 prévoit la possibilité d'obtenir, aux frais de l'Etat, une traduction en langue néerlandaise, en langue française ou en langue allemande, c'est-à-dire dans une des trois langues nationales, des procès-verbaux, déclarations des témoins ou du plaignant, ainsi que des rapports d'expertise. Les documents doivent être mis à la disposition de l'inculpé avant sa comparution en chambre du conseil ou devant la chambre des mises en accusation. Aucune disposition semblable n'existe pour les langues qui ne sont pas des langues nationales.</p>
<b>Cyprus</b>	<p>(a) In general terms, evidence which is obtained improperly has no evidential value. This is the case especially concerning evidence which is obtained in contravention to the constitutional provisions concerning human rights and to the European Convention of Human Rights (ECHR). However if the evidence obtained is not in contravention to the constitutional provisions, but still is obtained by other illegal means, it is admissible at the Court "if such evidential value is greater than the prejudicial effect". (<i>D. Paris-V-The Republic</i>, Cr. Appeal 6314, 5/5/1999)</p> <p>(b) According to article 7 of the Criminal Procedure Rules, when the accused pleads not guilty, he shall have the right to require in writing from the prosecution authorities to supply him with the copies of all the documents (e.g. his interview to the police officers) and papers which are</p>



	<p>relevant to the offence that he is accused of. In addition to that, article 102 provides that "a person who has been committed to trial shall be entitled to have a copy of the charge, the depositions and of his statement and, where practicable, of any documents which have been put in evidence."</p> <p>(c) According to article 65(1) of the Criminal Procedure Rules, whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language which he understands. This provisions is emanating from the aforementioned constitutional provision: Article 12(5)(a) of the Constitution provides that the accused has the right to be informed promptly in a language which he understands and in detail of the nature and grounds of the charge preferred against him. Furthermore, Article 12(5)(b) provides that the accused shall have adequate time and facilities for the preparation of his defense.</p>
<b>Czech Republic</b>	<p>(a) The Criminal Proceedings Code provides for procedure that has to be taken up in collecting and presenting evidence. If the investigating authorities do not follow these provisions, the evidence thus improperly obtained cannot be taken into consideration and is inadmissible. Moreover, the investigating police officers are under the supervision of prosecutors who are in control of adherence of all relevant provisions because they are authorised to supervise if the legality in the pre-trial stage is observed.</p> <p>In addition, the defence counsellor is entitled to be present to the investigative acts the result of which may be utilised as evidence in the court proceedings already from the beginning of the criminal prosecution, unless their execution cannot be postponed and the information thereof given. He/she can raise objections to the manner of performance of the act at any time in its course.</p> <p>Finally, if the police agency considers the investigation as completed and its results as sufficient to file an action, it enables the defendant and defence counsellor to study the files and to move for supplementing the investigation within an adequate time. Therefore, the entitled persons may look into the files and get acquainted with the information therein contained, even with the records of all acts of criminal proceedings (with exemptions above specified). Each record must contain a brief and clear description of the act showing also that the legal provisions applicable to the execution of the act have been complied with, as well as the substance of the decisions stated during the act.</p> <p>(b) It is not clear from the question what is meant by "prosecution disclosure". We understand that the question aims at whether it is possible to conduct the main hearing as public excluded.</p> <p>Such possibility is provided for in our Criminal Proceedings Code. The public may be excluded from the main hearing for public interest reasons, protection of circumstances which are kept secret according to specific laws, protection of safety or other important interests of witnesses or in order to maintain order during the hearing. Such decision is taken by court.</p> <p>(c) As regards this question, we refer to our answer to the question 6.a). Furthermore, we would like to add that time limits for delivery of relevant documents must be respected even as far as translated documents are concerned.</p>

<p><b>Denmark</b></p>	<p>(a) According to Danish criminal law the assessment of evidence is not bound by formal rules of law, cf. AJA, section 896 (2). This is also the rule in case of improperly attained evidence. However, if evidence is found in the course of another legitimate investigation (e.g. during a search or wiretap), such evidence can be used as the basis of further investigation, but with certain exceptions it cannot be presented in court, cf. AJA, section 789 and 800.</p> <p>In case improperly attained evidence is presented in court, the court will take into account the way the evidence was attained in the ruling of the case.</p> <p>Instead, improper investigation is sought to be prevented by disciplinary rules, whereby police officers violating rules of criminal procedure can be sanctioned independently from the material case.</p> <p>(b) The prosecution is generally obliged to give full disclosure of the case files to the defence lawyer, cf. AJA, section 745 (1)-(2). The limited exception to this rule is found in AJA, section 745 (4):</p> <p>“If the consideration to foreign powers, the safety of the State or to the solving of the case or to a third party exceptionally requires it, the rules in Subsection 1 and 3 [right of full disclosure] may be deviated from, or the police can order the defence counsel not to pass on the information he has received from the police.”</p> <p>The exception has been interpreted rather narrowly, cf. Supreme Court ruling of 24 May, 2002, where the prosecution’s denial of disclosure based on the safety of the state was overruled, even though the evidence had been attained from a foreign state on the condition that it was only used for investigative purposes.</p> <p>(c) If a suspect does not speak Danish a translator shall assist the person during questioning, cf. AJA, section 149. Moreover, it is a general principle of administrative law that persons not speaking Danish shall be assisted by to the extent necessary. In criminal proceedings this also follows from the European Convention on Human Rights, article 5 (2) and 6 (3) (a) and (e). In cases concerning extradition assistance by an interpreter is also required if necessary according to notice no. 2/2002 for the Director of Public Prosecution.</p> <p>There is no formal time limit for when the defendant must have the relevant material available in a language he understands in order to prepare for trial. According to the general concept of the right to a fair trial and more particularly the European Convention of Human Rights article 6 (3) (b), the defendant must, however, have adequate time and facilities for the preparation of his defence.</p>
<p><b>Estonia</b></p>	<p>(a) There are very strict rules on collection and presentation of the evidences. The court depending on the level of violation can dismiss unlawfully obtained evidence.</p> <p><b>Code of Criminal Procedure</b></p> <p><b>§ 48. Classes of evidence</b></p> <p>(1) Evidence in a criminal matter is any factual data on the basis of which the preliminary investigator and court ascertain, pursuant to the procedure provided by law, the existence or absence of an act punishable pursuant to criminal procedure, the guilt of the person who committed such act, and other facts relevant to the just adjudication of the criminal matter.</p> <p>(2) Such information shall be established by the testimony of witnesses, victims, suspects, the accused or accused at trial, by the opinion of</p>

	<p>experts, physical evidence, the minutes of investigative activities and acts of court, and other documents, by photograph or film, audio, video or other data recording, documents or things obtained by way of surveillance.</p> <p><b>§ 49. Collection, production and verification of evidence</b></p> <p>(1) Preliminary investigators or courts have the right, in criminal matters conducted by the preliminary investigators or courts, to conduct all investigative activities prescribed in this Code, and to require the production of objects or submission of documents from officials and other persons.</p> <p>(2) All participants in a proceeding and persons, enterprises, agencies and organisations who do not participate in the criminal matter may, on their own initiative, provide information which qualifies as evidence.</p> <p>(3) The demands made by preliminary investigators, courts and prosecutors for the submission of documents or production of objects are binding on everyone. A notary shall provide information on notarial acts to a preliminary investigator, prosecutor and court on the basis of a court ruling, unless otherwise provided by law. The submission of documents shall be free of charge.</p> <p>(01.06.2000 entered into force 26.06.2000 - RT I 2000, 47, 289)</p> <p><b>§ 50. Evaluation of evidence</b></p> <p>(1) The court, prosecutor and preliminary investigator, guided by their conscience, shall evaluate the aggregate of evidence from all perspectives, thoroughly and objectively pursuant to law.</p> <p>(2) No evidence has predetermined weight for a court, prosecutor or preliminary investigator.</p> <p>(b) The defendant and his/her counsel have the right to be familiarized with all the evidences and with the complete pre-trial dossier/case file. There are only exceptions about the anonymous witness identity and the methods of surveillance actions.</p> <p>(c) If the summary of charges is prepared in a language in which the accused is not proficient, the preliminary investigator shall append a translation thereof in the native language of the accused, or in a language that he or she understands, to the summary of charges. The time between the disclosure of the summary of proceedings and the trial is sufficient time period to prepare the defence.</p>
<b>Finland</b>	<p>(a) Finland applies the Rule of Law-principle. In case of improper action the authorities can be charged with violation or negligent violation of official duty and they can be sentenced to fine or up to one year imprisonment and possible damages to the injured party.</p> <p>(b) All the evidence has to be disclosed latest at the trial. For the protection of the witnesses they can be heard without other party/public being present, contact information of the witnesses can be left out of the official documents, disclosure of the contact details from the official address etc. registry can be forbidden, although total anonymity of a witness is not allowed.</p> <p>(c) The documents can be translated and an interpreter is provided on state cost for the hearings and the trial. See above and attached leaflet on</p>

	legal aid.
<b>France</b>	<p>(a) Si une preuve résulte de l’accomplissement d’un acte illégal accompli en violation des formalités du code de procédure pénale, la nullité de cet acte, s’agissant par exemple d’une perquisition, pourra être demandée et le tribunal ne pourra pas, si l’acte est annulé, se fonder sur cet élément de preuve.</p> <p>Par ailleurs, si l’accomplissement d’un acte illégal par un enquêteur ou un magistrat révèle la commission d’une infraction, la responsabilité pénale de l’enquêteur ou du magistrat pourra être engagée.</p> <p>L’article 429 du CPP dispose ainsi en matière correctionnelle que “tout-procès-verbal ou rapport n’a de valeur probante que s’il est régulier en la forme, si son auteur a agi dans l’exercice de ses fonctions et a rapporté sur une matière de sa compétence ce qu’il a vu, entendu ou constaté personnellement”.</p> <p>(Voir sur cette question le point 9. a.)</p> <p>(b) Au terme de l’article 11 du CPP, la procédure au cours de l’enquête et de l’instruction est secrète et toute personne qui concourt à cette procédure est tenue au secret professionnel et est passible de sanctions pénales en cas de violation de ce principe.</p> <p>Ces dispositions sont applicables au procureur de la République.</p> <p>Toutefois, depuis la loi du 15 juin 2000, il peut, afin d’éviter la propagation d’informations parcellaires ou inexactes ou pour mettre fin à un trouble à l’ordre public, d’office ou à la demande de la juridiction d’instruction ou des parties, rendre publics des éléments objectifs tirés de la procédure ne comportant aucune appréciation sur le bien-fondé des charges retenues contre les personnes mises en cause.</p> <p>(c) La traduction des pièces de la procédure ne s’effectue pas de manière systématique. Toutefois, si elle est demandée par la personne poursuivie, cette traduction doit être ordonnée par l’autorité judiciaire (voir en outre le point 8.c.).</p>
<b>Germany</b>	<p>(a) The investigating authorities are bound to a number of provisions in connection with the obtaining of evidence, such provisions being differentiated according to the type of investigative measure. In this respect it must be borne in mind that there are no specific provisions to prevent evidence being obtained improperly; statutory conditions must instead be satisfied prior to the actual taking of any evidence in a manner that could be construed as intrusive in order to make it admissible in the first place.</p> <p>(b) The corresponding regulations are found in Section 147 StPO. Defence counsel shall be entitled to inspect those files which are available to the court, or those which would have to be submitted to the court if charges are preferred, and also to inspect officially impounded pieces of evidence (Section 147 paragraph 1 StPO).</p> <p>If the termination of the investigations has not yet been noted in the files, defence counsel may be refused inspection of the files or of individual documents in the files, as well as inspection of officially impounded pieces of evidence, if this may endanger the purpose of the investigation (Section 147 paragraph 2 StPO).</p> <p>At no stage of the proceedings may defence counsel be refused inspection of records concerning the examination of the accused or concerning such judicial acts of investigation to which defence counsel has been or should have been admitted, nor may he be refused inspection of expert opinion (Section 147 paragraph 3 StPO).</p> <p>Upon application, defence counsel may be permitted to take the files, with the exception of items of evidence, to his office or to his private</p>

	<p>premises for inspection, unless there are significant reasons to the contrary. The decision shall not be contestable (Section 147 paragraph 4 StPO).</p> <p>Regarding permission to inspect the files, the public prosecution office shall take decisions during the preparatory proceedings and after the conclusion of the proceedings has entered into legal force; in other cases, the judge presiding over the court dealing with the case shall be competent to decide. If the public prosecution office refuses to grant permission to inspect files, after having noted the termination of the investigations in the files, it shall refuse inspection pursuant to Section 147 paragraph 3 StPO or, if the defendant is not released, a judicial ruling may be applied for. No reasons need be given for decisions concerning permission to inspect files if publication of the same could endanger the purpose of the investigation (Section 147 paragraph 5 StPO).</p> <p>If the reason for refusing the inspection of the files has not already ceased to exist, the public prosecution office shall revoke the order no later than upon completion of the investigation. Defence counsel shall be notified as soon as the right to inspect the files exists again without restriction. (Section 147 paragraph 6 StPO).</p> <p>Information and copies from the files may be issued to a defendant without defence counsel, provided that the purpose of the investigation is not endangered and the interests of third parties are not compromised as a result. Section 147 paragraph 5 StPO applies correspondingly to these cases (Section 147 paragraph 7 StPO).</p> <p>(c) Pursuant to No 181 paragraph 2 of the Guidelines for criminal proceedings and summary proceedings concerning administrative penalties [RiStBV], summonses, warrants of arrest, fixed penalty orders, charge sheets and other substantive judicial decisions issued to foreign nationals who do not have an adequate command of German shall be translated into a language which they understand. There are no particular time limits for this; given that from the outset the documents are to be made available to foreign nationals translated into a language they understand, i.e. at the same time as would apply to a defendant with a command of German, there is also no need for this to be specified separately.</p>
<b>Greece</b>	<p>The investigating authority may collect evidence by choosing from a number of possible means, including the <i>in situ</i> examination (autopsy), the ordering of expert's reports, the conduct of searches, confiscation, the deposition of witnesses and of the suspect himself. The CCrP provides detailed provisions on how each of these evidentiary methods is conducted<sup>105</sup>. Provisional procedural safeguards as to the improper obtainment of evidence are not used by the legislator. The method followed is that when the crucial procedural requirements are not followed, the relevant act is considered null. Thus the CCrP stipulates that the nullity of an act or of a document of the criminal procedure is effected when it is so provided in the relevant provision. These nullities function as safeguards during the pre-trial proceedings and they are taken into consideration by the court only if they are invoked by the district attorney or any of the parties that has lawful interest in so doing. The declaration of any such nullity leads to the nullity of subsequent acts of the criminal procedure, if these depended on the originally annulled<sup>106</sup>.</p>

<sup>105</sup> CCrP, articles 180-232 251-274.

<sup>106</sup> CCrP, articles 170, 173 and 175.

	<p>In contrast to the trial proceedings, the whole pre-trial procedure is characterised by the principle of secrecy<sup>107</sup>.</p> <p>(c) See above under 6a.</p>
<b>Hungary</b>	<p>(a) The evidence is not acceptable if obtained by way of a crime or by any other means that represents violation of the essential rights of the person concerned.</p> <p>(b) After the investigation, the investigating authority handles the documents of the investigation to the suspect and his/her counsel on an appointed date in order to establish the opportunity for them to learn its content. The authority has to enable the access to these documents after the specific date as well. Only those documents to which access is limited are not under the effect of this rule. Such limitation may be justified by witness protection. Furthermore, if the result of secret data collecting is used in the procedure, the record of obtaining such information has to be attached to the other documents that the suspect and the counsel has access to. The suspect and the counsel has the right to learn state or official secrets as well.</p> <p>(c) The same rules apply as during the trial (see above).</p>
<b>Ireland</b>	<p>(a) Evidence obtained as a result of breach of constitutional rights, for example a confession obtained following an assault or evidence gathered during an unlawful search of a dwelling house, is subject to a strict exclusionary rule and would not be admitted in evidence (except if it could be shown that there were extraordinary excusing circumstances sufficient to justify the breach e.g. to save a life). Evidence obtained in breach of a legal, as opposed to constitutional right, for example, an illegal search of a workplace would be subject to discretion on the part of the trial Judge to admit the evidence.</p> <p>(b) The Prosecution is under an obligation to disclose all relevant material. Relevant would include evidence which might undermine the prosecution's case or provide the defence with a lead towards establishing a defence. There are no exceptions to this rule. If material is relevant it must be disclosed and if it could not be disclosed then the question of the continuance of the prosecution would have to be reconsidered. Where privilege is claimed over material for example to protect an informant then it would be a matter for the trial Judge to rule whether such material was relevant and needed to be disclosed.</p> <p>(c) Every defendant is entitled to trial in due course of law. If he did not understand the documents or the evidence to be adduced at his or her trial or was not furnished with translations of those documents in sufficient time to prepare a defence then that would not constitute a trial in due course of law. There is no express time limit since each case would depend on its own facts.</p>
<b>Italy</b>	<p>(a) Article 191, dealing with "evidence improperly acquired", states that "evidence acquired in breach of the prohibitions laid down by law shall not be admissible" and also states that "inadmissibility may also be established <i>proprio motu</i> at any stage and level of proceedings". Consequently, when the law lays down specific methods for collecting evidence or investigative materials that may be used as evidence in a hearing (for instance one-off activities), the court cannot base its decision on such evidence or materials if these formalities have been contravened.</p> <p>(b) Disclosure takes place in two stages.</p> <p>The public prosecutor, at the time of the application for court referral, lodges the file containing the notice of offence, documentation in relation</p>

<sup>107</sup> CCrp, article 241.

	<p>to the investigations carried out and the records of court proceedings in connection with preliminary investigations with the court chancery. The material evidence and matters connected with the offence are attached to the file, when they do not have to be kept elsewhere (Article 416 CCP). The public prosecutor – at the time of the application for court referral – will already, moreover, have made a first disclosure in line with a regulation introduced recently (1999) under which he must, once inquiries are complete, notify the suspect (when he does not intend to request that no further action be taken) of such completion, advising him that the materials collected are lodged with his own secretariat (Article 415 bis CCP).</p> <p>No investigative measures are exempt from disclosure, apart from those covered by police confidentiality in respect of police informants, whose evidence is gathered informally and is not recorded. The information that they give cannot, however, be used for any decision-making purposes or in the course of investigations (for instance to provide the grounds for remand measures or mail or telephone interception) or as evidence in hearings.</p> <p>(c) See Article 143(2) CCP, as mentioned above. As regards the time limits within which defendants must receive procedural documents in a language which they understand, the relative provisions are the same as the ordinary provisions of the Code of Criminal Procedure on compliance with the time limits for each individual procedural document that such provisions cover.</p>
<b>Latvia</b>	<p>(a) The procedural order of the proceedings in criminal cases is regulated by the Criminal Procedural Code. The duty of the preliminary investigator, prosecutor, judge (court) is strictly to observe material and procedural laws in all stages of the criminal proceedings. The structure of the procedure is such, that in every further stage it is verified the previous stage lawfulness and propriety of taken decisions. If it is established the violation of the law, there are provided for undertakings to prevent delicts. The proceedings advancers and participants as well as another privies have right to appeal court/judge adjudications and decisions and actions of the prosecutor, police, preliminary investigation institutions. The order of appealing is provided for in Criminal Procedural Code. Moreover, in accordance with Public Prosecution Act and Criminal Procedural Code, the prosecutor supervises the lawfulness of insituting the criminal case and observing the law in preliminary investigation and during the court trial. The prosecutor in criminal proceedings supervises the preliminary investigation activities, organizes, administers and holds a pre-trial investigation and maintains state accusation in the court. Relizing the supervision prosecutor revokes illegal and unreasoned decisions in criminal cases, made by pre-investigation institutions and minor prosecutors, examines complaints on actions and decisions of pre-investigation institutions and minor prosecutors, gives directions to advance investigation and to secure specific investigation actions. CPC empowers prosecutor to examine materials of whatever criminal case, give obligatory directions to advance the proceedings, to observe the law, undertake specific investigation activities in purpose to identify personality, which is called to criminal liability, to set aside ungrounded decisions.</p> <p>Moreover, in accordance with Public Prosecution Act, the prosecutor is liable to disciplinary proceedings for deliberate offence or negligence, caused substantial consequences.</p> <p>Latvian Code of Criminal Procedure contains one chapter that is</p>

	<p>dedicated to the issues connected with evidence. The regulations of this chapter stipulate the requirements for evidence that can be used in the criminal case.</p> <p>Besides that the persons who allege the fact that the investigating authorities has improperly obtained evidence may submit their statement to the police according to the procedure stipulated in the Articles 108 and 109 of the Code of Criminal Procedure.</p> <p>(b) Pre-trial investigation data can be disclosed to publicity only with the permission of the chief of pre-investigation institution or prosecutor and in such capacity they consider possible.</p> <p>In case of need prosecutor warns witnesses, the suffered, civil plaintiff, civil defendant, defender, expert, specialist, translator and other persons being present at the time of investigation activities, that without his permission they may not expose pre-trial investigation data, including such case participants who are to be provided with personal security. These persons have to sign they are warned of liability according to p.304 of Criminal Law – exposing of pre-trial investigation data.</p> <p>If due to persons', involved in investigation activities, safety or other reasons is not expedient expose this person's adress and job place, these data are filled up in the protocol with name and phone (facs.) of those institution, which mediation the prosecutor uses to summon this person.</p> <p>If, in connection with given by the aggrieved person, witness, suspect, accused, offendant or convict evidence it is emerged a real danger to their life, health, property or legal interests, the threats are expressed or there is a ground to suppose, that danger can occur, and, that they testify in criminal cases on serious or especially serious crimes, these persons are definable with special procedural security. That security is also definable for those persons, who being endangered can influence procedurally vulnerable. The basis to appoint such security is written motion by the mentioned person and procedure advancer. The decision to acknowledge a person vulnerable is taken by Attorney-General.</p> <p>Realizing special procedural security, the procedural advancer provides the personal identification data would not be revealed and fixated in the criminal case materials. To ensure the personal identification data of the vulnerable person would not be exposed, all identification data of this person in criminal case documents (protocols, decisions, experts and specialists conclusions, indictments, annexures to them, judgements etc.) are substituted by pseudonym and those institution name and phone (facs) number, with which mediation the vulnerable person can be summoned to pre-trial investigation or to the trial. When it appears a need to prevent contradictions in two earlier questioned persons testimonies, if one of the persons is vulnerable, they can be questioned together employing such technical appliance which does not allow to identify the vulnerable person.</p> <p>(c) See 6) (a), (b).</p> <p>The prosecutor cannot limit the time needed for the accused and his solicitor to get acquainted with the criminal case materials. Nevertheless, if the accused and his solicitor are obviously protracting familiarization with the case materials, the prosecutor has right under motivated decision to define a term within which one has to be familiarized with materials of the case.</p> <p>The rihgt to be acquainted with materials of the case the accused (offendant) has also when the criminal case has been already committed for trial. The accused is also supplied with the indictment, in case of need</p>
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	with its translation (if the indictment is written in language the accused does not understand, the prosecutor is obliged to attach the translation of it into native language of the accused or into language he does understand), the prosecution cannot start before three days are gone from the indictment was dispensed to the accused (offendant).
<b>Lithuania</b>	<p>a) Evidence in criminal proceedings is data obtained in accordance with the procedure laid down by law. Evidence may be only such material which is obtained by lawful means and may be validated by means of the procedures laid down the Code of Criminal Procedure (Article 20 of the Code of Criminal Procedure).</p> <p>b) Data from a pre-trial investigation is not published. Before a case is considered in court, such information may be published only with the consent of the public prosecutor and only to the extent acknowledged to be permissible. It is forbidden to publish data concerning suspects or victims who are minors. Where necessary, the public prosecutor of pre-trial investigation officer warn the participants in proceedings or other persons having witnessed the pre-trial investigation that they may not publish data from a pre-trial investigation without the permission of the public prosecutor. In such cases, the person is sent a warning by hand delivery of his responsibility under Article 247 of the Code of Criminal Procedure (Article 177 of the Code of Criminal Procedure).</p> <p>c) Any person suspected or accused of having committed a criminal act is entitled to be informed quickly and in detail in a language he understands of the nature or grounds of the accusation and to have sufficient time and opportunities to prepare a defence (Article 44 of the Code of Criminal Procedure). No specific time limit is laid down. When examining the material of the case, participants in the proceedings are entitled to use the services of an interpreter/translator. The documents of the case which, under the provisions of the Code of Criminal Procedure, are supplied to the suspect, accused or convicted person must be translated into that person's native language or into another language of which he has knowledge (Article 8 of the Code of Criminal Procedure).</p>
<b>Luxembourg</b>	<p>a) Tous les actes d'enquêtes, de vérifications d'identités, d'auditions des témoins ainsi que les saisies et perquisitions sont réglementés de manière à ce que les droits de la personne inculpée soient garantis et respectés. Certaines de ces dispositions sont prévues à peine de nullité. En matière répressive, la preuve est libre. L'article 154 précise que les contraventions seront prouvées soit par procès-verbaux ou rapport, soit par témoins à défaut de rapports et procès-verbaux, ou à leur appui. L'article 189 concernant la preuve des délits correctionnels renvoie à l'article concernant les contraventions, de sorte que leur preuve se fera de la même manière.</p> <p>b) Les audiences sont publiques. Le ministère public résumera l'affaire et donnera ses conclusions. Cependant, le tribunal peut, en constatant dans son jugement que la publicité est dangereuse pour l'ordre public ou les mœurs, ordonner par jugement rendu en audience publique que les débats auront lieu à huis clos (art. 190).</p> <p>c) Comme dit précédemment, le juge d'instruction dispose du moyen de faire appel à un interprète afin que l'inculpé puisse mieux comprendre la procédure. Ce recours à un expert est utilisé pour les confrontations et les interrogatoires. Après le premier interrogatoire, l'inculpé et son conseil peuvent prendre connaissance des pièces du dossier, sans déplacement la veille de chaque interrogatoire et de tous autres devoirs pour lesquels l'assistance d'un conseil est admise.</p>

	En outre, la communication des pièces peut être demandée par voie de requête sur papier libre adressée au juge d'instruction. La communication des rapports d'expertise ne peut jamais être refusée.
<b>Malta</b>	(a) Invalidity of evidence. (b) Full disclosure except for public interest.
<b>The Netherlands</b>	<p>The legal requirements to obtain evidence are specified in the Dutch legislation. If the investigating authorities neglect the legal requirements during the preliminary investigation and therefore illegally obtain evidence, the Dutch legislation gives the court the right to use a sanction of article 359a. Article 359a gives the court the right to decide that the prosecution is not valid (in extremely rare cases), to lower the height of the sentence or to exclude the illegally obtained evidence (see question 9).</p> <p>During the pre-trial phase the public prosecutor is responsible for the contents of the file which has to be submitted to the court. As a temporary measure certain information can be withheld from the file and the defense, if submitting might be harmful for the investigation (like statements of co-suspects from the same crime)(article 30). At the end of the preliminary investigation or if the summons is served, all limitations have to be lifted (article 33).</p> <p>Besides it is possible to keep specific details concerning the gathering of evidence secret (article 187d). These details, like the name of an informant or the nature of used equipment for monitoring or telephone taps, are not relevant to the defence but may damage the investigation in general when they become public.</p> <p>c. In accordance with article 5 and 6 ECHR on request the summons will be translated in writing if a suspect does not understand the Dutch language. The other document will be in the Dutch language, but the lawyer or an interpreter can translate the essence.</p>
<b>Poland</b>	<p>(a) In the Polish criminal procedure there is no general rule concerning a legal way of obtaining evidence.</p> <p>There are a number of rules with a view to ensure the proper obtaining of evidence through determining prohibitions in relation with evidence.</p> <p>Such prohibition refers to explanations, testimonies and statements given in conditions that exclude the freedom of speech or obtained by violation of prohibitions specified in Article 171 (4) of the Polish Code of Criminal Procedure (threat, coercion, hypnosis, chemical or technical means affecting psychical processes, illegal methods of hearing).</p> <p>Moreover, there exists:</p> <ul style="list-style-type: none"> <li>- a prohibition to replace the evidence by explanation of an accused or by testimony of a witness with letters, notes or official notes</li> <li>- a prohibition to hear in the character of witnesses: a defence counsel, as to the facts he/she has learned while providing legal advice or while carrying on the case, or a clergyman, as to the facts he has learned during the confession</li> <li>- a prohibition to disclose the testimony of a person having a right of refusal to testify, who states, prior to the commencement of the first testimony at the court hearing, that he/she wishes to use this right</li> <li>- a prohibition to obtain correspondence and parcels without the authorisation from a prosecutor or a court</li> </ul>

	<ul style="list-style-type: none"> <li>- a prohibition to conduct a search without a warrant from a court or a prosecutor</li> <li>- a possibility of monitoring and recording the contents of telecommunications only pursuant to a court warrant issued upon a prosecutor's motion in cases enumerated in the provisions</li> <li>- a prohibition of disclosing facts being under a state or public service secret without being exempted from keeping it secret by the superior authority and a court</li> <li>- a prohibition of using as evidence an accused person's statement concerning the act he/she is charged with, given before an expert or a physician providing medical assistance.</li> </ul> <p>(b) In the course of the preparatory proceedings, the extent of disclosure is limited.</p> <p>Unless provided otherwise by law, the inspection of files of the preparatory proceedings in progress, the making of copies and photocopies of the same by parties, defence counsels, legal representatives and statutory agents, and the issuance of certified copies or photocopies, for a fee, shall require permission by the person conducting the preparatory proceedings. With the permission of the state prosecutor, access to files in the pending preparatory proceedings could be given to other persons (art. 156 of the Code of Criminal Procedure). The refusal to provide access to files in the preparatory proceedings shall be subject to interlocutory appeal (art. 159).</p> <p>The party may not be refused permission to copy a record of procedural action in which it participated or had the right to participate, as well as a document obtained from such a party or prepared with the participation of the same (art. 157).</p> <p>In addition to that, pursuant to the provisions of Article 13 of the Law on Press, it is forbidden to publish in the press the personal data and images of persons against whom there is a preliminary or judicial proceeding carried on, as well as the personal data or images of witnesses, victims and injured persons, unless they consent.</p> <p>A prosecutor who conducts the proceeding may allow, on account of an important public interest, to disclose the personal data and images of persons against whom there is a preliminary proceeding carried on and to publish other data concerning the pending proceeding, as far as it is possible taking the good of the proceeding into account.</p> <p>(c) An accused should be notified of the date of the hearing not later than 7 days in advance. Until then he/she should receive all the documents relating to the preliminary proceeding, the translation of which is obligatory (a decision on presentation, supplementation or change of charges, an indictment, judgements subject to an appeal or ending the proceeding).</p>
<b>Portugal</b>	<p>(a) The investigating authorities have to follow the rules of criminal proceedings. Article 126 of the Portuguese Criminal Code stipulates that evidence obtained by the following procedures is null: torture, coercion, or generally, an attack on the physical or moral integrity of people. When a person's physical or moral integrity is injured, the evidence obtained is rendered null, even when there is consent via: a) alteration of free will or of a decision, through ill treatment, corporal punishment, administration of means of any nature, hypnosis or use of cruel or deceitful means; b) alteration by any means of the capacity for memory or assessment; c) the</p>

	<p>use of force outside the cases and limits permitted by law; d) the threat of a measure that is legally impossible, or, similarly, refusal or making a condition of receipt of a legally provided benefit; e) promise of legally admissible advantage. Except in the cases provided by law, evidence obtained in the following manner is null: interference in private life, or in the home, in correspondence or in telecommunications, without the consent of the respective owner.</p> <p>(b) Under Article 86 of the Portuguese Criminal Code, criminal proceedings are public - and would be null if not so – from the moment of the decision of examination, or if there is no examination, from the moment in which the proceedings cannot be appealed. The proceedings are public from the moment the defendant receives the indictment, opening the examination, if the examination was only answered by him, and in this indictment, he is not opposed to publicity.</p> <p>(c) See reply (6) above relating to access to an interpreter or translator.</p>
<b>Slovak Republic</b>	--
<b>Spain</b>	<p>(a) There is no specific rule on this point. However, the LECR (Arts. 668 to 743) extensively regulates the way evidence is used during the trial (confession by the accused, examination of witnesses, expert's report, documentary evidence and visual inspection). In general it is laid down that no evidence can be introduced other than that put forward by the parties, nor can any witnesses be examined other than those included in the lists presented.</p> <p>(b) Persons appearing may be informed of the prosecution case and take part in all the indictment proceedings (Art. 302). However, if the crime was against the public interest, the Judge, at the request of the Public Prosecutor, the parties or on his own initiative, may declare the prosecution documents to be secret, either in total or in part, from all the parties appearing for a period not exceeding one month and in any case the prosecution documents must cease to be secret at least ten days before the case is concluded.</p> <p>(c) If the defendant does not understand the language, he has the right to have the prosecution documents translated into a language he does understand. The time limits only begin once the documents have been translated.</p>
<b>Sweden</b>	<p>(a) The Swedish legislation contains a lot of rules of what measures the investigating authorities are authorized to take during the investigation. If a measure is not expressly allowed it is forbidden. Therefore there are no explicit rules that prevent the investigating authorities from improperly obtaining evidence.</p> <p>(b) When the preliminary investigation has advanced so far that a person is reasonably suspected of committing the offence, he shall, when he is heard, be notified of the suspicion. To the extent possible without impediment to the investigation, the suspect and his defence counsel shall be informed continuously of developments in the investigation. They shall also have the right to state what inquiries they consider desirable and otherwise consider to be necessary. A notice concerning these matters shall be delivered or sent to the suspect and to his defence counsel upon which they shall be afforded a reasonable time for counselling. Prosecution may not be decided before this is done (Chapter 23 Section 18 of the Code of Judicial Procedure).</p> <p>(c) According to Chapter 33 Section 9 of the Code of Judicial Procedure the court may, if required, provide for the translation of documents filed with or dispatched from the court. This rule shall also be applied as to transfer of Braille to ordinary writing or vice versa. The court is obliged</p>

	to translate a document in a criminal case or the most important part of the document, if the document shall be send to somebody who lives in a State within the EEC area and the court has reason to believe that the person doesn't understand the language in the document.
<b>United Kingdom</b>	<p><u>England &amp; Wales:</u></p> <p>(a) There is a wide range of legislation and guidance (including Codes of Practice) to ensure that key police procedures (such as interviewing and searching) are conducted properly and fairly, thus providing an assurance that any evidence obtained through them is properly obtained. This is complemented by wide powers for the courts to exclude evidence that affects the fairness of a trial. Under section 78 of the Police and Criminal Evidence Act 1984 (PACE), courts in England and Wales have a discretion to exclude evidence if it appears that, having regard to all the circumstances in which the evidence was obtained, its admission would have such an adverse effect on the fairness of the proceedings that the court ought not to allow it to be presented. PACE also preserved the common-law power of the courts to exclude unreliable evidence where its probative value would be outweighed by its prejudicial effect, although this has largely been overtaken in practice by section 78. There is also specific provision for evidence obtained through confession. Under section 76 of the 1984 Act, the prosecution may be asked by the court (either at the instigation of the defence or at its own initiative) to prove that a confession was neither obtained by oppression or as a consequence of something that would make it unreliable. If they are unable to do so, the confession will not be admissible. If, however, no objection is raised to the confession, then it is admissible under this section provided it is relevant to an issue in the case.</p> <p>(b) The prosecution is required to give the defence details of the evidence it proposes to use at the trial, for example copies of witness statements. In addition, the Criminal Procedure and Investigation Act (CPIA) 1996 sets out a two stage scheme for disclosure of unused prosecution material. The Act imposes a duty on the prosecution to make a primary disclosure of unused prosecution material which, in the prosecutor's opinion, might undermine the prosecutor's case; or he must provide the accused with a written statement that there is no material of this kind. After receiving primary prosecution disclosure the defence, in serious cases tried in the Crown Court, must set out the general nature of the accused's defence which will indicate where the defence takes issue with the prosecution. Following the receipt of the defence statement the prosecution is required to disclose any additional unused material which might assist the accused's defence.</p> <p>Specific exemptions from disclosure apply to: -</p> <p>Material that meets the tests for disclosure under the 1996 Act but which the court has ordered not to be disclosed on the grounds of public interest (following an application from the prosecution). Examples of such material will include sensitive information about surveillance techniques and police informants. In each case it is for the court to decide whether such material should be disclosed after balancing the interests of the defence against the public's interest in non - disclosure. In reaching its decision the court must examine the material and consider the nature of the immunity claimed; the likely effect of it's disclosure on the public interest; the sensitivity of the information in question, and the degree to which it may affect the defence. Material obtained by interception under a warrant issued under S. 2 of the Interception of Communications Act 1985</p>

	<p>It should be noted that the courts have held that the public interest in the fair administration of justice always outweighs that of preserving the secrecy of sensitive material where its non - disclosure may lead to a miscarriage of justice.</p> <p>(c) The prosecuting authorities and courts will ensure that a defendant understands all prosecution documents served on him. Such documents may also be translated upon request to the courts' administration. General time limits are set down by the CPI Act for the disclosure of material to defendants and subsequently for the defendant to provide a defence statement.</p> <p><u>Scotland:</u></p> <p>(a) In deciding whether evidence illegally or irregularly obtained is admissible, the court must balance a number of competing factors, such as the urgency of the investigation (including the likelihood of evidence disappearing before a search warrant is obtained), the seriousness or triviality of the irregularity, the gravity or otherwise of the crime, the good faith or otherwise of the person who obtained the evidence and general fairness to the accused. The accused's ECHR rights must be taken into account as part of this balancing exercise.</p> <p>Once a person has been arrested or detained, the police are able to search him and to take physical samples (such as fingerprints or a saliva sample for DNA) which are appropriate having regard to the circumstances of the alleged offence. Otherwise, a warrant must generally be granted by the sheriff in order to search a person or property, or to take samples, unless the situation is urgent. In deciding whether to grant a warrant, the court must balance the public interest in the recovery of evidence against the right of the individual who would be subjected to the warrant to be protected against any undue invasion of his person or property.</p> <p>(b) In Scotland the prosecution has a duty at any time to disclose to the defence information in its possession which would tend to exculpate the accused. It must respond to specific requests from the defence for information or the production of statements or other items where the defence can explain why they would be material to the defence. This involves the defence making the prosecution "aware of the possible significance of these items for the defence of the accused". Where this system fails there is available the petition procedure for the recovery of documents. However, the defence does not have substantially unfettered access to all of the material held by the prosecution.</p> <p>(c) The prosecution translates what it considers the accused will need, bearing in mind the ECHR case law which suggests that it will be enough if the accused has a general understanding of the nature of the charge and his lawyer receives the detail.</p>
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**At trial**

<p><b>Question 8</b></p>	<p><b>8) Language difficulty or deafness</b></p> <p>(a) If the defendant cannot follow proceedings in the language of the State or region in which the trial is held, either because of a language difficulty or because he is deaf, what provisions exist for interpretation or signing during the trial?</p> <p>(b) Where there is a <i>prima facie</i> language difficulty (e.g. a foreign national or a defendant from a different region), who makes the assessment of whether the defendant is capable of following the proceedings without assistance?</p> <p>(c) What mechanisms exist to ensure that suspects who have a language difficulty understand the proceedings and what they are accused of from a legal point of view?</p> <p>(d) Are there liability arrangements in the event of an acquittal? (*NB note to translation: this question has been taken verbatim from the mutual recognition programme of measures and should therefore be translated into French as “quel est votre régime de responsabilité en cas de non-lieu, de relaxe ou d’acquittement?” so as to remain faithful to that text. Thank you.)</p> <p>(e) What percentage of those charged with an offence are ultimately convicted? Please also give separate figures for proceedings abandoned by the prosecution before the start of the trial, for convictions at first instance and for first instance convictions overturned on appeal.</p>
<p><b>Austria</b></p>	<p>(a) If a defendant is deaf or dumb, an interpreter with a knowledge of sign language must be called upon, if the defendant is able to communicate in this way. Otherwise an attempt must be made, to communicate with the defendant in writing or in some other suitable way by which the defendant can make himself understood (§ 198 paragraph 3 in conjunction with § 164 of the Code of Criminal Procedure). The provisions of § 38a of the Code of Criminal Procedure which have already been cited on a number of occasions, according to which a defendant who does not have an adequate knowledge of the language of the court must be granted assistance with translation, if necessary through the provision of an interpreter; this applies in particular to hearings. In practice an interpreter will be called in for all main hearings if there is any indication that the defendant does not have an adequate command of German. Should it only become apparent during the course of the main hearing that the defendant requires an interpreter, and if it is not possible to call in an interpreter on an ad hoc basis, the main hearing will be adjourned so that a sworn and certified interpreter can be consulted. There is no provision for signing by the defendant during the main hearing.</p> <p>(b) As a rule records of questioning by the police or examining judge or other documents will be available to the judge who will direct the main hearing, sitting by himself or as the chairman, at the time when the main hearing is arranged and the defendant summoned to attend, from which it will be apparent whether the defendant requires an interpreter. In practice an interpreter will be called upon if indicated as relevant. Any decision on an application by the defendant in the main hearing for an interpreter to be called will be made by the court.</p> <p>(c) Reference should be made to the responses to Questions 8a, 7c and 6a.</p> <p>(d) The Legal Compensation Act (StEG) provides a basis, amongst other things, for the compensation of anyone who as the result of a criminal action which is to be prosecuted domestically is placed in temporary</p>

	<p>detention or remanded in custody or on bail by a domestic court, and is subsequently acquitted of any offence, or otherwise released from prosecution, and any suspicion that the injured party committed the offence is refuted or prosecution is precluded for any other reason, provided these existed at the time of detention (§ 2 paragraph 1b of the Legal Compensation Act); the same applies in the case of someone who is sentenced by a domestic court and on the re-opening of criminal proceedings (see response to Question 12a) is acquitted or otherwise released from prosecution after his sentence has been set aside or has recently been sentenced, if in a case of this nature a more lenient sentence is imposed (see also response to Question 12b).</p> <p>There is no compensation for the negative effects of prosecution under criminal law in itself.</p> <p>(e) In 2000, the Public Prosecutor set aside a report or terminated proceedings against some 129,400 people before the main proceedings commenced. After a successful <i>diversion</i>, proceedings against some 36,000 people were abandoned. Charges were brought against about 67,700 people, of whom about 41,600 were convicted.</p> <p>In 2001, 50 appeals against conviction by courts including lay judges and juries were successful in the Supreme Court. In Provincial Supreme Courts 1,182 appeals against conviction by Provincial courts were successful; it is not possible to identify the proportion of these which were against the severity of the sentence. Appeals against conviction by district courts were successful before Provincial courts in 950 cases. It is not possible to state how many of these decisions ended with the first instance convictions being overturned.</p>
<b>Belgium</b>	<p>(a) Problème de langue ou surdité</p> <p>Si le prévenu ou l'accusé ne peut suivre la procédure dans la langue de l'État ou de la région dans lesquels se tient le procès, soit en raison d'un problème de langue, soit parce qu'il est sourd, quelles dispositions sont prévues pour assurer l'interprétation dans sa langue ou en langage des signes pendant le procès ?</p> <p>V. supra ce qui a été dit concernant l'intervention des interprètes. Aucune distinction n'est faite entre la langue des signes et les autres langues.</p> <p>(b) La juridiction devant laquelle comparaît la personne en cause.</p> <p>(c) Par application de l'article 31 de la loi du 15 juin 1935 concernant l'emploi des langues en matière judiciaire, dans tous les interrogatoires de l'information et de l'instruction ainsi que devant les juridictions d'instruction et les juridictions de jugement, l'inculpé fait usage de la langue de son choix pour toutes ses déclarations. Si les agents chargés de l'information ou le parquet ou le magistrat instructeur, ou les juridictions précitées, ne connaissent pas la langue dont il est fait usage par l'inculpé, ils font appel au concours d'un traducteur-juré. Les frais de traduction sont à charge du trésor.</p> <p>(d) Il n'existe aucun régime de responsabilité en cas de non-lieu ou d'acquiescement.</p> <p>Il peut être renvoyé en passant aux implications pour le prévenu d'un non-lieu ou d'un acquiescement prononcé en ce qui concerne les frais de justice. En cas de constitution de partie civile, la chambre du conseil qui rend le non-lieu ou le tribunal qui prononce l'acquiescement peut condamner la partie civile à payer tout ou partie des frais de la procédure pénale. La partie civile sera obligatoirement condamnée aux frais lorsque c'est elle qui a mis l'action publique en branle (articles 162 et 194 du Code d'Instruction criminelle). Les frais non supportés par la partie civile sont à la charge de l'Etat.</p>



	<p>En revanche, il existe un mécanisme d'indemnisation par l'Etat en cas de détention illégale, inopérante ou injustifiée. Ce mécanisme est prévu dans la loi du 13 mars 1973 relative à l'indemnité en cas de détention préventive inopérante. Contrairement à son intitulé, cette loi s'applique à toute privation de liberté quel qu'en soit le titre.</p> <p>(e) Il n'existe pas, à ce sujet, de statistiques globales en Belgique. Néanmoins, un projet informatique global de la Justice, dénommé projet PHENIX, est en cours aux fins de permettre la collecte de telles informations. En effet, un des objectifs de PHENIX est de regrouper les informations qui se trouvent actuellement dans diverses banques de données décentralisées. A titre indicatif, vous trouverez ci-dessous les statistiques émanant des tribunaux de police : (tableau en annexe).</p>
<b>Cyprus</b>	<p>(a) It is provided by law that specialised interpreters shall be designated by the Court and, depending on the particularities of each case or the specific difficulties of the defendant, these interpreters or translators shall use the sign language or, in any case, translate into a language understood by the defendant, in order for the latter to be able to follow proceedings. According to article 59 of the Criminal Procedure Rules, "a witness who is unable to speak, may take the oath or affirm and may give his evidence in a manner which he can make it intelligible, such as by writing or by signs and the signs made in open court." The constitutional provisions mentioned above (Art 12(5)(a) and (e)) are also relevant.</p> <p>(b) The assessment of whether the defendant is capable of following the proceedings without assistance is made by the Judge.</p> <p>(c) In practice, such suspects are asked by the judge, through the assistance of the interpreter, to answer whether they understand the language (or sign language) in which the judicial procedure is taking place. In addition to that, the mechanism of selecting qualified translators or interpreters, as it has been described above, as well as the provision of Article 65(I) of the Criminal Procedure Rules, are two security clauses towards the confirmation that such suspects understand the proceedings.</p> <p>(d) This question could not be answered due to lack of clarity. (Does it mean the ability of the defendant to apply to national courts and the European Court of Justice for compensations or does it mean a percentage of civil liability in the corresponding civil case, if there exists one?)</p> <p>(e) According to the figures given by the Police concerning the year 2002, a total amount of 4,774 criminal cases have been reported to the Police. From this amount, a number of 3,514 cases -that consists a percentage of 73,6% of the whole amount- has been investigated. That means that these cases are (or have been) under examination at the Office of the Attorney General, that they are pending at the Court or that they have already been decided by the Court. The rest of the aforesaid amount- that is a percentage of 26,4%- is related to cases which are currently under investigation by the Police. Concerning the number of criminal cases which have reached the Court in year 2001, according to the figures given by the prosecuting authorities, only a percentage of 10-15% of the total amount of these cases have not been abandoned by the prosecution and reached the stage of the trial.</p>
<b>Czech Republic</b>	<p>(a) As regards this question, we refer to our answer to the question 6.a)</p> <p>(b) The competent agency involved in the criminal proceedings.</p> <p>(c) Again, we refer to our answer to the question 6.a)</p> <p>(d) This question isn't very clear to us. We understand that it relates to the liability of the state for damages caused in consequence of unlawful</p>

	<p>decisions on custody, detention or imprisonment. There was adopted an Act on Liability of the State for Damages Caused in Consequence of Improper Official Procedure or Decision within the Execution of Public Authority in the Czech Republic. According to this law, it is possible to claim the damages caused in consequence of the decision on custody, detention order and decision on imprisonment under specific circumstances provided for by this Act. We further specify the conditions under which the compensation is provided in the answer to the question 12.b).</p> <p>(e) <u>The statistics from the year 2002:</u>  Number of criminal offences according to police statistics: 372 341  Number of prosecuted persons: 110 800  Number of charged persons: 93 881</p>
<b>Denmark</b>	<p>(a) AJA, section 149 provides for rules regarding linguistic assistance, including assistance to deaf defendants. Generally, the defendant has the right to be assisted by a translator, if the defendant does not understand the Danish language.</p> <p>(b) The judge makes the assessment of whether the defendant is capable of understanding the proceedings without linguistic assistance.</p> <p>(c) There are no formal rules to ensure that the defendant understands the proceeding and what he is charged for. The estimation is made on the basis of all available information. The defence counsel can, however, request that a court decision is made on the issue, and chose to make an interlocutory appeal on this point.</p> <p>(d) No matter if the accused is acquitted or convicted, the state is liable to pay for the necessary linguistic assistance.</p> <p>(e) In 2000 approx. 40.000 persons were charged with a crime under the Criminal Code. Approx. 30.000 of these (75%) were convicted (imprisonment, conditional sentence or fine). Approx. 8.000 cases were abandoned by the prosecution.</p> <p>It should be noted that there is some uncertainty connected with these numbers, since the registration of initial police charges are made on a different basis than the number of court decision.</p>
<b>Estonia</b>	<p>(a) The Code of Criminal Procedure (art. 112 para. 1) states that if a person participating in a criminal matter is not proficient in the language in which the investigation is conducted, an interpreter or translator shall be summoned to the investigative activity. Criminal Procedure Code (art. 112 para. 2) states: A person proficient in the form of expression of a deaf or mute person shall be summoned to the questioning of such person.</p> <p>(b) The assessment is made first by the defendant him/herself and then by the judge. In case of problems experts can be engaged.</p> <p>(c) An interpreter or a translator, or a person proficient in the form of expression of a deaf or mute person shall be warned of his or her liability in the case of refusal to perform his or her duties, and in the case of producing a knowingly false interpretation or translation pursuant to articles 318 or 321 of the Penal Code, and his or her signature shall be obtained thereto. Art 228: A judge shall explain the duties of an interpreter or translator to him or her and warn him or her of the liability for refusal to interpret or translate or for a knowingly false interpretation or translation pursuant to § 112 of this Code.</p> <p>(d) There are no such liability arrangements.</p> <p>(e) In 98.9% of the criminal cases brought to court the defendants are convicted. We do not have statistics on convictions overturned on appeal. According to the legality principle all discovered cases must be brought before a court.</p>

<b>Finland</b>	<p>(a) A translator/interpreter is provided on state's expenses if needed. See above.</p> <p>(b) Assistance is available on request, costs are covered on the same bases as costs of legal aid, depending on the income and wealth of the defendant. See above.</p> <p>(c) See above, legal aid, translators.</p> <p>(d) Yes, in cases, where the accused has lost his freedom, i.e. he has been arrested or detained for more than 24 hours. The accused can apply for compensation (costs, pain and suffering, loss of income, application fees) in the court or directly from the State treasury. In addition to that, the state covers the legal fees for a person acquitted.</p> <p>(e) Approximately 92 % of those prosecuted are convicted at first instance. In 1998 prosecution abandoned 18.616 cases (26%) on various grounds and handed 53.181 cases to first instance courts. In 2000 prosecution abandoned 22.275 cases. Total amount prosecuted persons in 2000 was 69.881, of which found guilty 65.500 and sentenced 64.400.</p>
<b>France</b>	<p>(a) Le code de procédure pénale (article 407 en matière correctionnelle et 344 en matière criminelle) prévoit que si la personne poursuivie ne parle pas suffisamment la langue française, le président désigne d'office un interprète.</p> <p>Il en est de même s'il est nécessaire de traduire un document versé aux débats.</p> <p>Si la personne poursuivie est atteinte de surdité, le code de procédure pénale prévoit spécifiquement (article 408 du CPP et 345 pour la cour d'assises) que le président nomme d'office pour l'assister lors du procès un interprète en langue des signes ou toute personne qualifiée maîtrisant un langage ou une méthode permettant de communiquer avec les sourds. Le président peut également décider de recourir à toute disposition technique permettant de communiquer avec la personne atteinte de surdité. Enfin, si l'accusé sait lire et écrire, le président peut également communiquer avec lui par écrit.</p> <p>(b) Il appartient aux juges d'apprécier souverainement si la personne poursuivie a une connaissance suffisante de la langue française pour être entendu sans être assisté d'un interprète.</p> <p>(c) Il appartient au juge de s'assurer que les personnes poursuivies comprennent la procédure et ce qui leur est reproché ainsi que les pièces qui sont éventuellement versées aux débats, en désignant le cas échéant un interprète et en s'assurant à l'audience, notamment en fonction des réponses qui sont données et traduites par l'interprète que la personne poursuivie comprend les questions qui lui sont posées et qui lui sont traduites.</p> <p>L'art. 407 prévoit ainsi que si le prévenu ne parle pas suffisamment la langue ou s'il est nécessaire de faire traduire un document versé aux débats, le président désigne d'office un interprète, âgé au moins de 21 ans et qui devra prêter serment.</p> <p>(d) Les dispositions relatives à la réparation des détentions provisoires injustifiées ont été sensiblement modifiées par la loi n°2000-516 du 15 juin 2000 renforçant la protection de la présomption d'innocence et les droits des victimes et la loi n°2000-1354 du 30 décembre 2000 tendant à faciliter l'indemnisation des condamnés reconnus innocents.</p> <p>Sur le fond, alors que le système instauré par la loi du 17 juillet 1970 prévoyait la faculté pour le juge d'indemniser un préjudice anormal et d'une particulière gravité, condition qui devait être supprimée par la loi 96-1235 du 30 décembre 1996, les dispositions nouvelles modifiant les articles 149 et suivants du code de procédure pénale ont établi un régime</p>

	<p>de réparation obligatoire du préjudice tant matériel que moral subie par une personne ayant bénéficié d'un non-lieu, d'une relaxe ou d'un acquittement devenus définitifs, après avoir été détenu provisoirement. Seules, trois hypothèses limitativement énumérées par la loi, s'agissant de l'irresponsabilité pour cause de trouble mental, d'une amnistie postérieure à la détention provisoire, lorsqu'elles sont le seul fondement de la décision ou du cas de la personne s'étant librement et volontairement accusée ou laisser accusée à tort en vue de faire échapper l'auteur des faits aux poursuites, peuvent justifier l'absence de réparation du préjudice.</p> <p>En ce qui concerne la procédure, l'article 70 de la loi du 15 juin 2000 a transféré, à compter du 16 décembre 2000, ces contentieux aux premiers présidents des cours d'appel, devant statuer sur la demande de réparation par une décision motivée à l'issue d'une procédure contradictoire et d'un débat public, ces décisions pouvant alors faire l'objet d'un recours devant la commission de réparation de la Cour de cassation.</p> <p>Ces nouvelles dispositions ont en outre donné lieu à la modification des articles R 26 et suivant du code de procédure pénale par les décrets no. 2000-1204 du 12 décembre 2000 relatif à l'indemnisation à raison d'une détention provisoire et no. 2000-709 du 31 juillet 2001 relatif à la commission de suivi de la détention provisoire, afin pour l'essentiel de transposer devant les premiers présidents la procédure d'instruction des demandes auparavant applicables devant la commission nationale d'indemnisation des détentions provisoires.</p> <p>Une commission de suivi de la détention provisoire a été instituée par l'article 72 de la loi du 15 juin 2000. Placée auprès du ministre de la justice et composée de deux représentants du Parlement, d'un magistrat de la cour de cassation, d'un membre du Conseil d'Etat, d'un professeur de droit, d'un avocat et d'un représentant d'un organisme de recherche judiciaire, elle est chargée de réunir les données juridiques, statistiques et pénitentiaires concernant la détention provisoire, en France et à l'étranger. Cette commission se fait communiquer tout document utile à sa mission et peut procéder à des visites ou à des auditions.</p> <p>Par ailleurs, la loi du 15 juin 2000 a prévu à l'article 800-2, complété par les articles R.249-2 à R.249-8 du code de procédure pénale que la juridiction qui prononce un non-lieu, une relaxe ou un acquittement, peut accorder à la personne poursuivie qui en fait la demande une indemnité au titre des frais qu'elle a exposés pour la procédure. Cette indemnité est en principe à la charge de l'Etat, mais peut être mise à la charge de la partie civile si l'action publique a été mise en mouvement par celle-ci. La décision de la juridiction est susceptible d'appel.</p> <p>L'indemnité est accordée pour les frais d'honoraires d'avocat, les frais de séjour et de déplacement induits par la procédure, et les indemnités journalières pour la durée des audiences ou des interrogatoires.</p> <p>L'indemnité est plafonnée par référence au montant du tarif de l'aide juridictionnelle pour les honoraires d'avocats et au montant des frais remboursés pour les témoins et les experts pour les autres postes de l'indemnité.</p> <p>Par ailleurs, les articles 149 et suivant du code de procédure pénale prévoit un régime de réparation obligatoire du préjudice tant matériel que moral subi par une personne ayant bénéficié d'un non-lieu, d'une relaxe ou d'un acquittement devenus définitifs, après avoir été détenu provisoirement (voir point 12.b.)</p> <p>Ces deux régimes de réparation sont cumulatifs.</p> <p>(e) (Question ne relevant pas de la compétence du bureau. Toutefois et</p>
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	<p>pour mémoire, les chiffres suivants tirés du rapport sur l'activité des parquets pour 2000 sont communiqués) :</p> <p>En l'an 2000, sur 468 034 prévenus poursuivis devant le tribunal correctionnel, 441189 ont été condamnés, 19038 relaxés et 7807 ont été reconnus coupable, le prononcé de la peine ayant été ajourné.</p> <p>Sur 470 personnes morales jugés devant le tribunal correctionnel, 332 ont été condamnés, 135 relaxés et 3 reconnus coupables, le prononcé de la peine ayant été ajourné.</p> <p>(Le bureau ne dispose pas de chiffres concernant les cours d'assises).</p> <p>Sur la question relative à l'abandon des poursuites par le ministère public avant le début du procès, ce problème ne se pose pas en droit français, puisque lorsqu'une décision de poursuite a été décidée et que l'action publique a donc été déclenchée, le procureur de la République ne peut arrêter le cours de l'action publique et abandonner ses poursuites. La juridiction de jugement est obligatoirement saisie et il lui appartient de statuer sur les faits. Il est toutefois possible au procureur de la République, s'il lui est impossible d'abandonner ses poursuites, de requérir une relaxe ou un acquittement.</p>
<b>Germany</b>	<p>(a) No 21 paragraph 2 of the Guidelines for criminal proceedings and summary proceedings concerning administrative penalties [RiStBV] stipulates that an interpreter with a command of sign language shall be routinely engaged for proceedings involving deaf-mute or deaf defendants. Pursuant to these regulations, an expert, e.g. a psychiatrist or a deaf-mute teacher, with knowledge and experience of the psychological and intellectual character of the deaf-mute or deaf should be engaged in the preparatory proceedings.</p> <p>Pursuant to Section 186 GVG, for proceedings involving deaf or mute persons, a person shall be engaged as interpreter to assist with communication unless written communication is used.</p> <p>Pursuant to Section 259 paragraph 2 StPO, a deaf defendant shall be informed by the interpreter at least of the applications made in the closing speeches by the public prosecution and by defence counsel, unless written communication is used. Any statements made by the defendant must always be translated in full. For the rest, the presiding judge has the discretion to engage the interpreter to communicate the closing speeches in full or to convey the main contents thereof.</p> <p>Note that applications for assignment of official defence counsel filed by accused persons who are deaf or mute shall always be granted (Section 140 paragraph 2 sentence 2 StPO).</p> <p>(b) The investigating officer or judge acting in the relevant stage of the proceedings must find out for certain, if necessary with the assistance of suitably qualified persons, whether the defendant is able to follow the proceedings without assistance.</p> <p>Pursuant to No 181 paragraph 1 of the Guidelines for criminal proceedings and summary proceedings concerning administrative penalties [RiStBV], it must be recorded at the stage of the first examination of a foreign national whether the defendant has an adequate command of German such that there is no need to engage an interpreter.</p> <p>(c) See the comments concerning letter (a).</p> <p>(d) In principle, the person concerned may make a claim for compensation pursuant to the Act on compensation for criminal prosecution measures [Gesetz über die Entschädigung für Strafverfolgungsmaßnahmen, StrEG]. Public liability claims for culpable, unlawful prosecution are also possible pursuant to Section 839 of the Civil Code [Bürgerliches Gesetzbuch, BGB] in connection with Article</p>

	<p>34 of the Basic Law.</p> <p>The following detailed stipulations apply to compensation pursuant to the provisions of the StrEG:</p> <p>Pursuant to Section 2 paragraph 1 StrEG, compensation from public funds is payable to a person who has suffered damage as a result of being held in remand detention or as a result of other criminal prosecution measures if he is acquitted or the proceedings against him are abandoned or the court throws out the case against him.</p> <p>Pursuant to Section 2 paragraph 2 StrEG, other criminal prosecution measures in this sense include:</p> <ol style="list-style-type: none"> <li>1. provisional committal and committal for observation pursuant to the provisions of the StPO and the JGG,</li> <li>2. provisional arrest pursuant to Section 127 paragraph 2 StPO,</li> <li>3. measures imposed by the judge who temporarily suspends execution of the warrant of arrest (Section 116 StPO),</li> <li>4. taking into possession, seizure and attachment pursuant to Sections 111d and 111o StPO as well as seizure of property pursuant to Section 111p StPO and search, unless compensation is regulated in other acts,</li> <li>5. temporary withdrawal of driving licence,</li> <li>6. temporary prohibition of pursuit of an occupation.</li> </ol> <p>Pursuant to Section 2 paragraph 3 StrEG, criminal prosecution measures in the sense of Section 2 StrEG also include custody pending extradition, temporary custody pending extradition, taking into possession, seizure and search ordered in another country at the request of a German authority.</p> <p>Pursuant to Section 3 StrEG, compensation may be awarded for the aforementioned criminal prosecution measures if proceedings are abandoned pursuant to a provision which allows this at the discretion of the court or the public prosecution office, provided this is fair and reasonable in accordance with the circumstances of the case.</p> <p>Pursuant to Section 4 StrEG, fair and reasonable compensation may also be awarded for the criminal prosecution measures referred to in Section 2 StrEG if the court has dispensed with imposing a penalty or if the legal consequences ordered in a judgment in a criminal case are less than the criminal prosecution measures relating to the conviction. Pursuant to Section 60 StGB, where a prison sentence of up to one year is incurred, the court shall dispense with punishment when the consequences of the act which have befallen the perpetrator are so serious that the imposition of punishment would be obviously inappropriate.</p> <p>Section 5 StrEG stipulates the circumstances in which compensation is precluded. The following are applicable:</p> <p>Pursuant to Section 5 paragraph 1 StrEG, compensation is precluded</p> <ol style="list-style-type: none"> <li>1. for remand detention, other detention and temporary withdrawal of driving licence if they are not taken into account in the sentence imposed,</li> <li>2. for detention if a custodial measure of reform and prevention has been ordered or an order of this type has only been dispensed with because the purpose of the measure has already been achieved by the period of detention,</li> <li>3. for temporary withdrawal of driving licence and temporary prohibition of pursuit of an occupation if withdrawal of driving licence or prohibition of pursuit of an occupation has ultimately been ordered or has only been dispensed with because the conditions for such were no longer in place,</li> </ol>
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	<p>4. for seizure and attachment (Sections 111b to 111d StPO), if forfeiture or confiscation of an object has been ordered or such an order has only been dispensed with because forfeiture would have eliminated or reduced satisfaction of a claim arising from the offence for the aggrieved party.</p> <p>Pursuant to Section 5 paragraph 2 StrEG, compensation is also precluded if and in so far as the defendant has caused the criminal prosecution measures with intent or as a result of gross negligence. Compensation is not precluded by the defendant having elected not to make a statement or having refrained from lodging an appeal.</p> <p>Pursuant to Section 5 paragraph 3 StrEG, compensation is also precluded if and in so far as the defendant has culpably caused the criminal prosecution measure as a result of not having complied with a properly executed summons to appear before the judge or has contravened an instruction pursuant to Section 116 paragraph 1 Nos 1 to 3 and paragraph 3 StPO issued in connection with suspension of execution of a warrant of arrest.</p> <p>Section 6 StrEG regulates the cases in which compensation is to be refused, as follows:</p> <p>Pursuant to Section 6 paragraph 1 StrEG, compensation may be fully or partly refused if the defendant</p> <ol style="list-style-type: none"> <li>1. has brought about the criminal prosecution measure as a result of having incriminated himself by not telling the truth on essential points or by contradicting subsequent statements or having remained silent on significant exonerating circumstances although he has given evidence on the charge, or</li> <li>2. has not been convicted for an offence or the case against him has been abandoned only because he acted in a state of criminal incapacity or because there was a hindrance to proceedings.</li> </ol> <p>Pursuant to Section 6 paragraph 2 StrEG, compensation for detention may also be fully or partly refused if the court applies the provisions applicable to a juvenile and hence takes the period of detention into consideration.</p> <p>Pursuant to Section 7 StrEG, the following shall apply to the extent of the claim for compensation:</p> <p>The subject of the compensation is the pecuniary loss caused by the criminal prosecution measure and, in the event of detention on the basis of a court decision, the non-pecuniary loss, i.e. non-material damage. Compensation for a pecuniary loss is only paid if the established loss exceeds an amount of EUR 25; in the case of non-material damage, compensation is payable at a rate of EUR 10 for each day or part thereof of the period of detention. No compensation is payable for a loss which would have been occurred even in the absence of criminal prosecution measures.</p> <p>The court makes a decision on the duty to pay compensation in the judgment or in the ruling closing the proceedings. If it is not possible to make a decision in the main hearing, the court shall make a decision in a ruling after consulting the parties involved outside the main hearing (Section 8 paragraph 1 StrEG).</p> <p>If the public prosecution office has abandoned the proceedings, the Local Court for the registered seat of the public prosecution office or, in certain circumstances, the court which would have been responsible for opening the main hearing shall, upon application by the defendant, make a decision regarding the duty to pay compensation. The application shall be submitted within a period of one month after service of notice of</p>
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	<p>abandonment of the proceedings. The notice of abandonment shall advise the defendant of his right of application, the deadline and the competent court (Section 9 paragraph 1 StrEG).</p> <p>If duty to pay compensation from public funds has been established with legal force, the claim for compensation shall be made to the public prosecution office which conducted the investigations at first instance within six months. The claim is precluded if the defendant has neglected to submit it within the deadline. The public prosecution office shall advise the party entitled of his right of application and the deadline. The deadline begins with the service of advice (Section 10 paragraph 1 StrEG). The Land administration of justice [Landesjustizverwaltung] makes a decision on the application (Section 10 paragraph 2 sentence 1 StrEG).</p> <p>Section 12 StrEG provides for an absolute term of preclusion. Accordingly, no claim for compensation may be made once a period of one year has elapsed from the end of the day on which the duty to pay compensation was established, unless an application has been made pursuant to Section 10 paragraph 1 StrEG.</p> <p>Section 13 StrEG provides for recourse to the law with respect to the decision concerning the compensation claim. The appeal shall be lodged within three months of the decision being served. The civil divisions of the Regional Courts have sole responsibility for compensation claims, irrespective of the value of the subject of litigation. Legal aid may be awarded for such proceedings in accordance with the general provisions applicable to civil litigation (Section 114 et seq. ZPO).</p> <p>(e) In 2000 a total of 953 460 persons were tried before the Local Courts. A total of 450 585 judgments were passed, 408 335 of which resulting in conviction of the defendant.</p> <p>In 2000 a total of 19 346 persons were tried at first instance before the Regional Courts. A total of 13 937 judgments were passed, 13 171 of which resulting in conviction of the defendant.</p> <p>In 2000 a total of 28 persons were tried at first instance before the Higher Regional Courts. A total of 27 judgments were passed, all resulting in conviction of the defendant.</p> <p>The statistics on right of appeal for 2000 reveal the following figures: A total of 29 665 appeal judgments (appeal on fact and law) were issued against decisions of the Local Courts. Of these,</p> <ul style="list-style-type: none"> <li>- 149 related to reversal of a judgment of the lower court and referral to the appropriate court;</li> <li>- 442 related to reversal of first-instance acquittal and conviction;</li> <li>- 1 532 related to reversal of first-instance conviction and acquittal;</li> <li>- 16 399 related to amendment/ supplementation of the pronouncement of judgment and simultaneous rejection of the appeal / reversal of the judgment in some other respect;</li> <li>- 42 related to abandonment as a result of a hindrance to proceedings;</li> <li>- 4 328 related to rejection of the appeal on the grounds of non-appearance of the defendant;</li> <li>- 6 773 related to rejection of the appeal on other grounds.</li> </ul> <p>A total of 313 judgments on appeal (appeal on law) were issued by the Higher Regional Courts. Of these,</p> <ul style="list-style-type: none"> <li>- 10 related to reversal of the judgment and referral to the appropriate court;</li> <li>- 170 related to reversal of the judgment and re-referral;</li> <li>- 4 related to reversal of the judgment and a decision on merits</li> </ul>
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	<p>being made by said court;</p> <ul style="list-style-type: none"> <li>- 9 related to amendment/ supplementation of the pronouncement of judgment with simultaneous rejection of the appeal / reversal of the judgment in some other respect;</li> <li>- 0 related to abandonment as a result of a hindrance to proceedings;</li> <li>- 111 related to rejection of the appeal as unfounded;</li> <li>- 9 related to rejection of the appeal as inadmissible.</li> </ul> <p>A total of 2 881 appeals on law were settled by the Federal Supreme Court of Justice. Of these,</p> <ul style="list-style-type: none"> <li>- 172 appeals were settled by judgment; 72 of these related to rejection of the appeal, 91 to reversal and re-referral and 9 to amendment;</li> <li>- 2 643 appeals were settled by a ruling; 356 of these related to rejection of the judgment of the lower court, 2 225 to rejection of the appeal as clearly unfounded, 42 to rejection of the appeal as inadmissible, 8 related to handling of the appeal by the lower court being inadmissible and 12 to the appeal being settled in another way;</li> <li>- 66 appeals were withdrawn.</li> </ul> <p>Figures are available for 1998 concerning the preliminary proceedings carried out by the public prosecution offices at the Regional Courts and offices of the public prosecutor. These comprised:</p> <ul style="list-style-type: none"> <li>- 538 807 charges;</li> <li>- 659 368 applications for waiver of a fixed penalty order;</li> <li>- 605 applications for opening of confinement proceedings;</li> <li>- 1 165 applications for implementation of <i>in rem</i> proceedings;</li> <li>- 43 096 applications for a decision in accelerated proceedings;</li> <li>- 22 600 applications for a decision in simplified court procedures in juvenile cases;</li> <li>- 249 484 conditional abandonments pursuant to the principle of discretionary prosecution;</li> <li>- 970 821 unconditional abandonments pursuant to the principle of discretionary prosecution, 420 807 of which on the grounds of the trifling nature of the offence and 246 477 on the grounds of insubstantial secondary offences;</li> <li>- 11 188 abandonments on the grounds of criminal incapacity of the defendant.</li> </ul>
<b>Greece</b>	<p>The provision on the appointment of a translator in evidentiary proceedings, as discussed above, covers the totality of the criminal procedure and therefore also the trial stage. However, there is no explicit provision on the accused person's assistance by a translator during the trial. On the other hand, persons who are deaf or mute or both and appear before the court to testify, whether it be witnesses or the accused himself, receive special treatment in consideration of their challenged state, as set forth in article 227 CCrP. Again, however, these provisions seem to be applicable in witness hearings and not in the whole trial hearings, which is a paradox.</p> <p>There is no specific provision designating the authority responsible for making such determination.</p> <p>There is no special mechanism as regards to this question, other than the provision on interpreter and/or translator.</p> <p>This question is insufficiently formulated and does not allow for a non-native English or French speaker to understand its meaning. Please advise.</p> <p>(e) Υπουργείο Δικαιοσύνης-Στατιστική Υπηρεσία!!!!!!</p>

<b>Hungary</b>	<p>(a) See the answer at 1. (c).</p> <p>(b) The authority/the court. It is important to note, however, that being “capable of following the proceedings” is a lower standard than the requirement according to which the suspect has the right to use his/her mother tongue. Thus, such consideration is irrelevant.</p> <p>(c) See the answer at 1. (c). Also, the suspect is asked through the interpreter to make a declaration about whether he or she has understood the charges and other important points.</p> <p>(d) Yes.</p> <p>(e) In 2002, 92% of people charged with an offence were ultimately convicted.</p>
<b>Ireland</b>	<p>(a) The Courts Service will arrange and pay for an interpreter to attend when a defendant cannot follow proceedings due to language or hearing difficulties. The Courts Service use sequential translation.</p> <p>(b) In practice, as most defendants will already have been questioned by the Garda Síochána, the need for an interpreter will be indicated to the court by the Garda Síochána or legal representative. In the event of a dispute, the presiding judge will decide on the need for an interpreter.</p> <p>(c) If a person does not understand the proceedings this is in itself a ground for appeal in the event of a conviction. In general, it is a matter for the defendant and/or his legal team to inform the court of any difficulties, but if the judge sees any problem it is open to the judge to call for an interpreter.</p> <p>(d) Are there liability arrangements in the event of an acquittal? (*NB note to translation: this question has been taken verbatim from the mutual recognition programme of measures and should therefore be translated into French as “quel est votre régime de responsabilité en cas de non-lieu, de relaxe ou d’acquiescement?” so as to remain faithful to that text. Thank you.) This question is not understood.</p> <p>(e) The majority of offences are tried in the District Court. These offences are in general minor offences, although it does deal with indictable crimes deemed suitable to be tried summarily (without a jury). Exact figures for the percentage of persons convicted in the District Courts are not available. The Circuit, Central and Special Criminal Court deal with indictable crimes and most “serious” offences are tried in these courts. Appendix ??? shows the number of persons convicted and acquitted in the Circuit, Central and Special Criminal Courts.</p>
<b>Italy</b>	<p>(a) See the comments above under 6).</p> <p>(b) The assessment is the task of the prosecuting authority, possibly following notification by the interested parties. Failure to observe the provisions on interpreting assistance and translation of documents gives rise to nullity which, in more serious cases (for instance in respect of the defendant’s summons), may be established at any stage and level of the proceedings.</p> <p>(c) See the comments above under 6).</p> <p>(d) [NB: <i>it is considered that the questions under d) and e) do not relate, despite their location, to the subject of point 8 (language difficulty or deafness)</i>] There are rules (Law 117 of 13 April 1988) on compensation for damages sustained in the exercise of judicial functions and on the civil liability of magistrates, which relate, however, only to cases in which there has been “wrongful damage resulting from a practice, act or judicial procedure set</p>

	<p>in motion by a magistrate with malicious intent or gross negligence in the exercise of his functions or from a denial of justice”. In such cases, it is possible to bring proceedings against the State for compensation for pecuniary damages and also for non-pecuniary damages resulting from the deprivation of personal liberty.</p> <p>As regards “wrongful detention”, Article 314 CCP reads: “Persons acquitted by irrevocable judgment because there has been no offence, as they have been cleared of the offence, or because the facts do not constitute an offence or are not defined as such by law, shall be entitled to fair compensation for the remand on custody suffered, when they have not caused it or have not helped to cause it through malicious intent or gross negligence.</p> <p>2. Persons acquitted on any grounds or persons sentenced if, in the course of the proceedings, they have been held on remand, shall also be entitled to this right when it is established by irrevocable ruling that the instrument providing for the measure has been issued or upheld in the absence of the conditions for its applicability [...]-</p> <p>3. The provisions of paragraphs 1 and 2 shall apply, in the same conditions, to persons against whom proceedings have been shelved or whose case has been dismissed</p> <p>There shall be no entitlement to compensation for that part of the remand on custody that has been served for the purposes of determining the extent of a sentence or for the period in which the restrictions arising from the imposition of remand on custody have been suffered as a result of another cause as well.</p> <p>5. If it has been affirmed by the judgment or dismissal measure that the offence is not defined as such by law as a result of the repeal of the regulation in question, there shall also be no entitlement to compensation for that part of the remand on custody served prior to that repeal.”</p> <p>(e) Data not at present available in the statistical surveying system.</p>
<b>Latvia</b>	<p>a) According to the CPCL Section 137, if any party to proceedings does not understand the language of proceedings, an interpreter has to be involved in proceedings. For interrogation of a dumb or deaf individual, a person shall be invited understanding the sign language of the dumb/deaf individual. The investigator has to explain to the interpreter their duties and warn about responsibility for refusal to interpret and for consciously incorrect interpretation, and make them sign for it prior to take interrogation or any investigative actions involving interpreter.</p> <p>The chairman of court session shall explain to the interpreter their duty to translate the contents of testimonies and applications made at the court session to the parties to proceedings not understanding the language of proceedings, as well as to interpret the contents of the announced documents, the contents of directions given by the chairman of court session and the contents of the court resolution (CPCL Section 269).</p> <p>b) c) The law cannot provide for special mechanism enabling to obtain special assurance about whether or not the individual understands the accusation, and whether or not they can follow the proceedings without any aid. This matter is rather practice-related, where the certain individual is heard about whether or not they understand what is going on, and whether or not they need any aid. In general, these matters are guided by the individual’s decency.</p>
<b>Lithuania</b>	<p>a) When hearing a case in which the accused does not understand or know the language of the proceedings, the participation of a defence lawyer is required. If the accused does not appoint a defence lawyer, the court hearing the case will appoint one. Under the Law on state-</p>

	<p>guaranteed legal aid, such legal aid is granted free-of-charge. Such a person is entitled to make statements, give evidence and explanations, submit applications and appeals, and speak his native or another known language in the court. In all of these cases, and when examining the material of the case, participants in the proceedings are entitled to use the services of an interpreter/translator. The documents of the case which, under the provisions of the Code of Criminal Procedure, are supplied to the suspect, accused or convicted person must be translated into that person's native language or into another language of which he has knowledge (Article 8 of the Code of Criminal Procedure).</p> <p>The participation of a defence lawyer is also required where the court is hearing a case in which the accused is deaf (Article 51 of the Code of Criminal Procedure). If that person does not appoint a defence lawyer, the court hearing the case will appoint one. Under the Law on state-guaranteed legal aid, such legal aid is granted free-of-charge. A deaf person is also entitled to make use of the services of an interpreter/translator free-of-charge, i.e. the services of a person who understand deaf or dumb language whom the court invites to take part in the proceedings in accordance with the procedure laid down by the Code of Criminal Procedure (Article 43).</p> <p>b) If, when the case is being heard in court, the accused clearly has language difficulties, he will be asked whether he requires the services of an interpreter/translator, and if necessary one will be appointed.</p> <p>c) Accused persons who have difficulty with language of proceedings are guaranteed the right to a defence lawyer. If he does not appoint a defence lawyer, the court hearing the case will appoint one. Under the Law on state-guaranteed legal aid, such legal aid is granted free-of-charge. The accused is also entitled to use the services of a translator/interpreter free-of-charge. The documents of the case which, under the provisions of the Code of Criminal Procedure, are supplied to the suspect, accused or convicted person must be translated into that person's native language or into another language of which he has knowledge.</p> <p>d) If the criminal case is dropped or the person is acquitted, the latter has no liability.</p> <p>Where a suspended sentence is imposed or early conditional release from a sentence is granted, the court will impose special obligations on the person concerned.</p> <p>In the case of a suspended sentence, the court imposes on the convicted person one or more such obligations and stipulates the time limit for meeting them. If the convicted person meets this time limit, has not committed any offences and there are grounds to believe that he will comply with the law without committing further criminal acts, the court releases the convicted person from his sentence once the above time limit has elapsed (Article 75 of the Code of Criminal Procedure).</p> <p>In the case of early conditional release from a sentence, the court <u>may</u> impose one of more obligations. If the person has met the obligations imposed on him has not committed any infringements of the law within the stipulated time limit, he will be deemed to have been released from his sentence (Article 77 of the Code of Criminal Procedure).</p> <p>e) In 2004, 97.5% of all persons charged with a criminal offence were convicted. There are currently no figures for cases abandoned by prosecution bodies. In 2004, there were 19 516 convictions at first instance, of which 1 126 were overturned on appeal.</p>
<b>Luxembourg</b>	<p>a) L'article 190-1 prévoit que dans le cas où le prévenu ne parle pas une des langues en usage au pays, ou s'il est nécessaire de traduire un</p>

	<p>document versé aux débats, le président du tribunal désigne d'office un interprète et lui fait prêter serment de traduire fidèlement les paroles prononcées ou les écrits versés.</p> <p>D'après l'article 190-2 si le prévenu est sourd-muet et ne sait pas écrire, le président nomme d'office, en qualité d'interprète, la personne qui a le plus habitude de communiquer avec elle.</p> <p>b) Le président du tribunal.</p> <p>c) cf a)</p> <p>d) Cette situation est réglée par la loi du 30 décembre 1981 portant indemnisation en cas de détention préventive inopérante. Ainsi, un droit à réparation est ouvert à toute personne qui a été détenue préventivement pendant plus de 3 jours sans que cette détention ou son maintien ait été provoqué par sa propre faute.</p> <p>a) si elle a bénéficié d'une ordonnance ou d'un arrêt de non-lieu</p> <p>b) si elle a été acquittée par une décision judiciaire définitive ou si elle a été mise hors cause indirectement par une décision judiciaire définitive</p> <p>c) si elle a été arrêtée ou maintenue en détention après l'extinction de l'action publique par prescription.</p> <p>L'indemnité à allouer est fixée en tenant compte du préjudice moral et matériel subi par le demandeur. Elle est à charge de l'Etat. La demande en réparation est introduite auprès du ministre de la justice qui statue dans les 6 mois.</p> <p>e) Ces données ne sont pas disponibles.</p>
<b>Malta</b>	<p>(a) An official interpreter.</p> <p>(b) The Court.</p> <p>(c) Court control.</p> <p>(d) No.</p> <p>(e) High proportion.</p>
<b>The Netherlands</b>	<p>If the defendant can not follow proceedings either because of a language difficulty or because he is deaf, the questioning and answering will be in writing (article 274).</p> <p>Suspects who have language difficulties because they speak a foreign language, have the right to an interpreter and the court session will not proceed as long as the interpreter is not there (article 275). The court decides to appoint an interpreter, but the prosecutor may anticipate this decision and may summon the interpreter before the trial has started.</p> <p>The mechanism to ensure that suspects who have a language difficulty, understand the proceeding, is the right to an interpreter and the actual provision of an interpreter.</p> <p>In the Netherlands we do not have liability arrangements in the event of an acquittal. On request of the defendant the court may award damages (article 89).</p> <p>If a defendant is discharged from prosecution because he is mentally ill, the court may order to place him under a hospital order or in a mental hospital (article 352).</p> <p>In the year 2000 14% of those charged with an offence got an unconditional dismissal, 27% was discharged of liability to conviction by payment of a fixed penalty or had a conditional dismissal and 59% had to appear in court.</p>
<b>Poland</b>	<p>(a) Persons having no command of the Polish language, deaf and dumb are always heard with an interpreter or an interpreter of a finger language. Those persons have always (except from the first category, for whom the defence counsel is appointed in certain circumstances) an ex officio defence counsel designated, whom they contact through</p>

	<p>the intermediary of the interpreter.</p> <p>(b) A person having no command of the Polish language may not participate in the proceeding without an interpreter, even if the court has the command of the language of the accused.</p> <p>The decision on designating an expert interpreter is issued by a prosecutor prior to the first hearing.</p> <p>(c) The participation of an interpreter and an <i>ex officio</i> defence counsel in judicial proceeding and their obligatory presence at each hearing guarantees that the accused who is a foreigner knows and understands his legal position.</p> <p>(d) An accused who, as a result of re-institution of the proceeding, a cassation or an established invalidity of the judgement, was acquitted or sentenced to a more lenient punishment, is entitled to obtain from the State Treasury a for the damage incurred and to a compensation for the injury suffered in consequence of the execution in whole or in part of the penalty that he should not have served.</p> <p>Moreover, he/she may claim redress for an unjust conviction, provided for in the Law of 23 February 1991 on recognising as invalid judgements issued against persons repressed in connection with activity for an independent existence of the Polish State, after the conviction has been declared invalid. The provisions concerning redress for an unjust conviction, preliminary detention or detention are applied accordingly.</p> <p>(e) Data for 2003</p> <ul style="list-style-type: none"> <li>- the percentage of those charged with an offence to ultimately convicted: 91,5%</li> <li>- the number of proceedings abandoned by the prosecution before the start of the trial at the preliminary proceeding stage – 985 018 (<i>in rem</i>); 66 893 (<i>in personam</i>)</li> <li>- the number of indictments sent to a court after the termination of the preliminary proceedings – 400 521 (<i>in rem</i>); 480 511 (<i>in personam</i>)</li> <li>- the number of persons sentenced before the first instance courts – 424 329</li> <li>- the number of accused persons, with regard to whom the second instance court issued a judgement quashing or changing the judgement of the first instance court – 29 629</li> </ul>
<b>Portugal</b>	<p>(a) As has been stated previously there are specific rules relating to the participation of deaf people, those with hearing difficulties and the mute, in proceedings (article 93 of Criminal Proceedings Code).</p> <p>When a person in one of these categories has to make a statement, the following rules are observed: a) the deaf person or person with hearing difficulty is appointed a suitable sign-language, lip-speaking, or writing interpreter, as most appropriate for the person affected; b) the mute person, if he is able to write, is addressed questions orally, replying in writing. If the contrary is the case, and when required, a suitable interpreter is appointed. The lack of an interpreter implies an adjournment of the proceedings. These rules are applied at all stages of the proceedings and independently of the position of the affected person in the matter.</p> <p>(b) The determining body is the judiciary authority presiding over the proceedings in question, applying the rules referred to above, interpreted in accordance with Article 6 ECHR.</p> <p>(c) See previous replies.</p>

	<p>(d) Article 225 of the Portuguese Criminal Code provides a system of indemnity for illegal or unjustified loss of liberty, stipulating that a person who has suffered manifestly illegal detention or remand, can appeal before the appropriate Court, for compensation for damage suffered because of loss of liberty. This regime applies to someone who has suffered being on remand that, without being illegal, is revealed to be unjustified due to gross error in appreciation of the facts on which it relied.</p> <p>Compensation may be allowed (article 462 of the Portuguese Criminal Code) in the case where an absolute decision is pronounced by the appeal judge, giving an order of compensation for injuries suffered by the defendant (financial and non-financial) and ordering restitution to him of sums relating to fines at the cost that he has borne. The compensation is paid by the State.</p> <p>(e) According to the statistics which we have available for 2000, proceedings took place for 106 795 persons, of which 53 682 were convicted and 53 113 not convicted (acquitted – 13 633; withdrawn – 22 742; amnesty – 4590; lack of evidence - 39; order - 8251; rejection of charge/no order – 264; other reasons – 3549).</p> <p>Source: Statistics of the Justice Ministry 2000</p>
<b>Slovak Republic</b>	<p>The language difficulties are solved by the provisions in the Code of Criminal Procedure (Section 28 + 29)</p> <p>b) The respective body active in the criminal procedure.</p> <p>c) The person suspected of having committed a crime shall be considered as accused and measures shall be used in respect of such person only after he was charged. The rights that belong to the accused person are particularly in provisions in the Section 33 of the Code of Criminal Procedure (e.g. right to give his opinion, to elect the counsel, ...).</p> <p>d) The investigator shall stay the Criminal Prosecution in the Section 172 named cases (e.g. not proved that act was committed by the accused, culpability of the act expired....). Under the Section 223 the court shall act the same way by Staying of criminal Prosecution. In the later stage of procedure if the case is not to be returned to the prosecutor not transferred and not stayed or suspended under relevant provisions of the Act – the court shall rule in the judgment as to find the defendant guilty or to acquit from the indictment (the act was not approved, the act was not a criminal offence, was not proved that act was committed by the defendant, defendant is not criminal liable, culpability expired).</p>
<b>Spain</b>	<p>(a) If the defendant does not understand Spanish or the official language of the Autonomous Community involved (in Spain there are some Autonomous Communities with an official language other than Spanish, for example, Catalan, Galician or Basque) an interpreter will be appointed. If he is deaf the questions will be put in writing. If he does not know how to write, a signer will be appointed.</p> <p>(b) (c) Where there is language difficulty, the Judge decides whether the defendant is capable of following the proceedings without assistance.</p> <p>(d) In case of release, dismissal or acquittal, the liability arrangements are determined by Art. 294 of the Framework Law on the Judiciary which lays down that .....</p> <p>(e) Percentage of those charged, convicted</p> <p>A distinction needs to be made between fast track trials and trials held after the initiation of a preliminary investigation and also between trials held in the criminal courts (single judge) and at provincial hearings (collegiate board).</p>

	<p>In the criminal courts, at fast track trials, there have been:</p> <ul style="list-style-type: none"> <li>- 4 145 guilty verdicts</li> <li>- 671 not guilty verdicts</li> <li>- 3 107 consent verdicts.</li> </ul> <p>At provincial hearings, in fast track trials:</p> <ul style="list-style-type: none"> <li>- 165 guilty verdicts</li> <li>- 53 not guilty verdicts</li> <li>- 11 consent verdicts</li> </ul> <p>As regards preliminary investigations, at Provincial Hearings,</p> <ul style="list-style-type: none"> <li>- 272 not guilty verdicts</li> <li>- 1 627 guilty verdicts</li> <li>- 1 334 appeals</li> </ul>
<b>Sweden</b>	<p>(a) Chapter 5 Section 6 of the Code of Judicial Procedure prescribes the following. If a party, a witness, or any other person who shall be heard by the court is incapable of understanding and speaking Swedish, an interpreter will be engaged. The court shall assign a suitable person to assist as interpreter in the case. If the person to be heard has a serious hearing or speaking impediment, an interpreter will be engaged. A person whose interest in the matter at issue, or whose relationship to any of the parties, could be considered to cast doubt on that person's reliability, may not be engaged as an interpreter. The interpreters has the same authorization as the interpreters that are engaged by the police.</p> <p>(b) If the defendant has not yet expressed whether or not he needs an interpreter the court will ask him if he needs one. If the defendant says he needs an interpreter, the court will assign one.</p> <p>(c) See (a) and (b) above.</p> <p>(d) In Sweden there is special legislation concerning damages for restriction of liberty. The present legislation, the Act concerning damages for restriction of liberty and other coercive measures (SFS 1998:714) is described under 12).</p> <p>(e) In the year of 2000 94 percent of those charged with an offence were convicted. The courts pronounced 48,483 convictions that year. In the year of 2001 1,214,968 crimes were reported to the police. In the cases where the police had a suspect 224,771 crimes were solved. 136,535 of this cases lead to prosecution. In 29,871 of the cases the prosecutor issued summary penalty orders "strafföreläggande". In 12,664 of the cases the prosecutor decided to waive prosecution. In 45,701 of the cases the crimes were declared solved through other kind of decisions. We don't have any figures of how many of of the first instance convictions which were overturned on appeal.</p>
<b>United Kingdom</b>	<p><u>England &amp; Wales:</u></p> <p>(a) The Court appoints (at public expense) the appropriate language interpreter or signer.</p> <p>(b) If a defendant has a language difficulty, his/her solicitors would bring this to the attention of the court administration so that an interpreter can be arranged for all court hearings (not just the trial). The National Agreement states that 'Where it is not apparent at the magistrates' court that an interpreter was needed and it is not on the committal certificate or other notification, it is the duty of the defence to notify the Crown Court that an interpreter is needed.'</p> <p>(c) When a defendant does not understand the English language and is unrepresented, the evidence at the trial must be translated to him. Similarly, where the accused is deaf, dumb or both, the judge must see that proper means are taken to communicate to him the case made against him and to enable him to make his answer to it. Where the accused is</p>



	<p>represented, the evidence should be interpreted to him, except when he or his counsel expresses a wish to dispense with the translation, and the judge thinks fit to permit the omission; the judge should not permit it unless he is of opinion that the accused substantially understands the evidence to be given and the case to be made against him at the trial. However, any substantial variation from the account originally given in a statement or deposition, or any additional evidence, should be translated to the accused, even though he might not wish it.</p> <p>(d) The meaning of this question is unclear. If it relates to compensation, there is no general entitlement to compensation in the event of an acquittal. Statutory provisions only related to wrongful conviction where the conviction is quashed in an 'out of time' appeal or where the case has been referred back to the court of Appeal by the Criminal Cases Review Commission. The Secretary of State may make an <i>ex gratia</i> payment in exceptional cases where the applicant has spent time in custody, for example where there is serious default by the police or an accused person is completely exonerated. There is also a remedy in the civil courts for those who have grounds for a claim of unlawful arrest or malicious prosecution.</p> <p>(e) 1,904,677 defendants were proceeded against for all offences in <u>England and Wales</u> in 2000 (figures on those charged are not held centrally) and 1,423,702 were found guilty, a conviction rate of 75%. Figures are not collected on those defendants with language difficulties. 61,836 of the total proceeded against were discontinued (3%), 19,394 discharged (1%), 351,403 withdrawn (18%) and 55,430 acquitted (3%). Slight differences in the total shown and the sum of the individual components are caused by a prosecution taking place in one year and the result, whether conviction or otherwise, taking place the following year.</p> <p><u>Scotland:</u></p> <p>(a) The responsibility for the provision of community, foreign and sign language interpreters for accused persons rests with the Scottish Court Service (SCS) both pre-and post-conviction. When a sign language interpreter is required the SCS would secure the services of one who is registered with the Scottish Association of Sign Language Interpreters. When a community or foreign language interpreter is required, SCS would in the first instance ask the interpreting service to provide an interpreter who has a Diploma in Public Service Interpreting or its equivalent.</p> <p>(b) In all cases it is for the Court to ascertain whether the accused is capable of following proceedings and it may have to rely on the prosecutor and the Defence Solicitor in making this assessment.</p> <p>(c) In all cases it is for the Court to ascertain via the interpreter that the accused understands the proceedings.</p> <p>(d) The public prosecutor is only liable in damages if it can be shown that he has acted with malice.</p> <p>(e) See attached annex.</p>
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<b>Question 9</b>	<b>9) Evidence</b> <b>What procedures exist for applying to have evidence declared inadmissible?</b>
<b>Austria</b>	The formal declaration of evidence as inadmissible – presumably derived from the Anglo-American legal system – is alien to Austrian law.
<b>Belgium</b>	Dans le cadre d’une instruction préparatoire, la chambre du conseil et la chambre des mises en accusation peuvent prononcer la nullité d’un acte de l’instruction qui est entaché d’une cause de nullité et l’écarter du dossier (articles 131, §1 et 235bis, §6n du Code d’Instruction criminelle).
<b>Cyprus</b>	The defendant has the right to object to a charge or information (article 66 of the Criminal Procedure Rules) and when such objections concerning the (in) admissibility of evidence are raised, the Court shall hear both sides of the trial and then decide on the matter accordingly.
<b>Czech Republic</b>	<p>A defendant (or his defence counsellor) may lodge a complaint against the procedure of police officers during the pre-trial stage. This complaint is submitted to the prosecutor who is obliged to settle it as soon as possible. This arrangement is connected with the fact that the prosecutor is obliged to supervise if the legality in the pre-trial stage is observed.</p> <p>Furthermore, even during following stages of criminal proceedings the defendant (or his defence counsellor) is entitled to lodge requests and complaints concerning the procedure of agencies involved in criminal proceedings.</p>
<b>Denmark</b>	As noted under 7(a), the court is free to decide whether illegally attained evidence shall be admitted in the proceedings. The defendant can plea to the court not to allow the evidence, but no special procedure exists.
<b>Estonia</b>	<p>There is a possibility to present a request for having evidence declared inadmissible to a court orally or in a written form.</p> <p><b>§ 237. Submission and adjudication of requests</b></p> <p>(1) A judge shall ask the prosecutor, the accused at trial, his or her criminal defence counsel, the victims and the representatives thereof, the plaintiffs, defendants or the representatives thereof whether they request the summoning of new witnesses, experts or specialists or the demanding of submission of new evidence and inclusion thereof in the criminal matter.</p> <p>(2) In court sessions, the participants in proceedings have the right to submit requests concerning all issues relating to the criminal matter regardless of whether such requests have previously been submitted in pre-trial investigation or examination by the court.</p> <p>(3) Denial of a request shall not deprive the person whose request was denied of the right to submit the request subsequently in the course of court hearing.</p> <p>(4) A court shall ask the opinions of other participants in the proceeding concerning each request.</p> <p>(5) After having heard the requests and the petitions of the participants in the proceeding, the court shall make a ruling on the satisfaction or denial of the submitted requests.</p>

<b>Finland</b>	A party that considers evidence inadmissible can make a claim in the court when the case is being considered. The court decides if the evidence is admissible or not on the basis of the facts and the claim.
<b>France</b>	Dans le cadre d'une information judiciaire, les demandes de nullité, formées devant la chambre de l'instruction doivent être faites avant que l'ordonnance renvoyant la personne devant la juridiction ne soit devenue définitive. Il convient de souligner toutefois qu'en application de l'article 173-1 du CPP modifié en dernier lieu par la loi du 4 mars 2002, la personne mise en examen doit, sous peine d'irrecevabilité, faire état des moyens pris de la nullité des actes accomplis avant son interrogatoire de première comparution ou de cet interrogatoire lui-même dans un délai de six mois à compter de la notification de la mise en examen, sauf dans le cas où elle n'aurait pu les connaître. Il en est de même s'agissant des moyens pris de la nullité des actes accomplis avant chacun de ses interrogatoires ultérieurs. Dans les autres cas (lorsqu'une information judiciaire n'a pas été ouverte), la demande de nullité peut être faite au moment du procès et la demande est formée devant le tribunal.
<b>Germany</b>	There are no particular procedures in this respect; the court must instead be aware in each case whether the evidence is admissible or not. Mistakes in this connection may be censured using admissible rights of appeal (appeal on fact and law, appeal on law) against the final decision.
<b>Greece</b>	See above under 7a.
<b>Hungary</b>	The evidence is not acceptable if obtained by way of a crime or by any other means that represents a gross violation of the rights of the person concerned. The court that evaluates the evidence according to its own consciousness observes the admissibility of proof.
<b>Ireland</b>	It is a matter for the trial Court to rule on the admissibility of all evidence.
<b>Italy</b>	See the comments above under 7a.
<b>Latvia</b>	There exist no specific procedures to determine whether or not the obtained proof is admissible. This is a matter of practice. The CPCL provides, however, that only the proofs obtained, verified and assessed in accordance with the procedure set forth in the Code may be applied to establish circumstances of the case. A proof is inadmissible if obtained by unlawful means, namely, in breach of the procedure set forth in the Code. Admissibility of proofs is assessed by the Prosecutor at the pre-trial investigation stage, and mainly the Judge in the litigation stage.
<b>Lithuania</b>	Article 20 of the Code of Criminal Procedure states that evidence in criminal proceedings is data obtained in accordance with the procedure laid down by law. Only such material which proves or disproves at least one circumstance relevant to a fair handling of the case may be regarded as evidence. Whether data obtained is admissible as evidence is decided in each case by the judge or court hearing the case.
<b>Luxembourg</b>	Vu l'article 126, le ministère public, l'inculpé, et toute personne concernée justifiant d'un intérêt légitime personnel peut, par simple requête, demander à la chambre du conseil du tribunal d'arrondissement la nullité de la procédure de l'instruction préparatoire ou d'un acte quelconque de la procédure. La demande doit être produite, à peine de forclusion, au cours même de l'instruction, dans un délai de 3 jours à partir de la connaissance de l'acte. La nullité peut encore être soulevée, sous certaines conditions particulières, devant la juridiction de jugement.
<b>Malta</b>	Criminal Code.

<b>The Netherlands</b>	To exclude evidence it is first necessary that the gathering of that piece of evidence was an illegal act. Second it is required that the suspect's interests are directly affected by this unlawfulness. If both conditions are met, the defendant can request the court to have the evidence excluded. However the court does not easily accept that the defendant is directly affected in his interests by the unlawfulness and therefore does not often exclude evidence.
<b>Poland</b>	See point 7a
<b>Portugal</b>	Article 125 of the Portuguese Criminal Code refers to the principle of legality of evidence, stipulating that evidence is admissible when not prohibited by law. Article 126 of the Portuguese Criminal Code states that all evidence obtained in the following ways is null: torture, coercion, attack on the physical or moral integrity of the person, abusive interference in private life, in the home, in correspondence or in telecommunications, already mentioned before. The Article regulates the inadmissible methods of evidence, the same being considered null. The nullified results arising from production of prohibited evidence are held by officials until processing of the final decision. Evidence is assessed, except when the law provides otherwise, according to the rules of experience of free conviction by the appropriate entity, observing the rule of free appreciation of evidence (Article 127 Portuguese Criminal Code).
<b>Slovak Republic</b>	Evidence obtained by means of unlawful duress or threat of duress can not be used in the proceeding (see also No. 4). It is up to the body active in criminal proceeding to take the respective decision.
<b>Spain</b>	The procedure for applying to have evidence declared inadmissible at the trial involves what are known as the "preliminary questions" which are governed by art. 793.2 of the lecr. At the beginning of the trial, the parties can make such statements as they consider appropriate about the competence of the judicial body, the infringement of any fundamental right, the existence of precedents, reasons for suspension of the trial, as well as the content and purpose of the evidence put forward or which is proposed to be used in the case. the court decides what is appropriate in the said case. As regards the evidence, art. 11 of the framework law on the judiciary lays down that evidence directly or indirectly obtained by violating fundamental rights or freedoms will be without effect.
<b>Sweden</b>	In Sweden there are no rules on "inadmissible evidence". The reason therefore is that the courts apply the principle of free evaluation of evidence elaborated in Swedish law during the 20th century.
<b>United Kingdom</b>	<u>England &amp; Wales:</u> See answer to 7a) <u>Scotland:</u> The prosecution or defence may object to any question or line of questioning at any time in the course of a trial. In jury trials, current practice is to deal with such an objection in the absence of the jury. The judge can decide to hear the disputed evidence before making a decision on admissibility ("trial within a trial") if necessary. If admitted, the evidence will then need to be repeated before the jury.

<b>Question 10</b>	<p><b>10) <i>In absentia</i> proceedings</b></p> <p><b>(a) Does your legal system provide for <i>in absentia</i> proceedings? If so, please describe the relevant provisions.</b></p> <p><b>(b) Is there a requirement that the defendant be represented by legal counsel in his absence?</b></p>
<b>Austria</b>	<p>(a) Yes. If an accused fails to appear at the main proceedings, the main proceedings can proceed and judgement be passed in his absence, although in the case of nullity for any other reason only if an offence which carries a maximum penalty of three years' imprisonment or was not committed wilfully is involved, the accused has already been questioned by the court and a summons to the main proceedings delivered to him in person. In that event the accused will be informed of the decision by a judge entrusted with this task or in transcript (§ 427 paragraph 1 of the Code of Criminal Procedure). In proceedings before a district court (for a criminal offence which carries a fine or a maximum penalty of one year's imprisonment), the court can proceed with the main proceedings and pass judgement in the absence of the defendant if the defendant fails to respond to a summons delivered to him in person; it is not, however, a requirement that the defendant should already have been questioned in court.</p> <p>(b) No.</p>
<b>Belgium</b>	<p>a) Il existe une procédure par défaut lorsque la partie régulièrement citée à comparaître ne comparaît pas ou, pour autant que cela soit autorisé, lorsqu'elle n'est pas représentée par un avocat (voir articles 149 et suivants et 186 et suivants du Code d'Instruction criminelle).</p> <p>b) Comme précisé au point 10)a), un jugement par défaut est prononcé à l'égard de la personne régulièrement citée à comparaître et qui ne comparaît pas ou n'est pas régulièrement représentée.</p> <p>Dans certains cas, la représentation par un avocat est autorisée. Dans ces cas, la procédure est contradictoire. Ainsi, les parties peuvent comparaître en personne au tribunal de police, assistées ou non d'un avocat, ou être représentées par un avocat (article 152 du Code d'Instruction criminelle). En ce qui concerne le tribunal correctionnel (et la chambre correctionnelle de la cour d'appel), le prévenu doit en principe comparaître en personne. Il peut se faire représenter par un avocat uniquement dans des cas exceptionnels (article 185 du Code d'Instruction criminelle).</p> <p>Le Ministre de la Justice prépare actuellement une initiative législative visant à inscrire dans le Code d'Instruction criminelle le droit du prévenu à être représenté, ce en vue d'harmoniser le droit interne avec la jurisprudence récente de la Cour européenne des Droits de l'homme.</p>
<b>Cyprus</b>	<p>(a) As a general rule, and based on the constitutional principle of fair trial, the Cyprus legal system does not provide for <i>in absentia</i> proceedings. However, there exist exemptions to this rule:</p> <p>(I) according to article 72(1) of the Criminal Procedure Rules, where the accused is a corporation, such corporation may appear and plead to a charge or information by its representative, by entering a plea in writing and in case that the corporation does not appear by representative, the Court shall proceed accordingly.</p>

	<p>(II) According to article 63(2) of the Criminal Procedure Rules, if the accused does not conduct himself properly during the trial, the Court may, in its discretion, direct him to be removed and kept in custody and proceed with the trial in his absence.</p> <p>(III) It is the practice followed in Cyprus courts, that in some occasions, basically at the first stages of judicial proceedings, if the accused is absent (because of illness, being abroad, or because of any other reason that the Judge considers to be adequately serious) he can be represented by his lawyer and the case will be postponed.</p> <p>(b) For the cases described in (I) and (III) above the answer is yes, while for cases described in (II) above, it is in the discretion of the Court.</p>
<b>Czech Republic</b>	<p>(a) Yes, our legal system provides for in absentia proceedings. In absentia proceedings bears these specific features:</p> <ul style="list-style-type: none"> <li>- the decision as to whether in absentia proceedings will apply or not is taken by the court on the suggestion of the prosecutor or without this suggestion,</li> <li>- provisions on compulsory defence should be applied (it means that the defendant must be at all events represented by defence counsellor),</li> <li>- all relevant documents concerning the case must be delivered to the defence counsellor,</li> <li>- in absentia proceedings is initiated by the delivery of the resolution on initiation of the criminal prosecution of the defendant to his/her defence counsellor,</li> <li>- the summon of defendant to the main hearing should be published. The main hearing takes place regardless of whether the defendant has had the knowledge about it.</li> </ul> <p>(b) Yes, see the previous answer.</p>
<b>Denmark</b>	<p>(a) Danish law allows for <i>in absentia</i> proceedings in certain cases. The rules are set out in AJA, section 847, according to which the main rule is that the defendant must be present at the proceedings. According to AJA, section 847 (2) witnesses can be heard without the presence of the defendant, if the defendant has been lawfully summoned to the case. It is an additional condition that it will be reconcilable with the interests of the defendant and adjournment would be of material inconvenience for the other parties involved.</p> <p>Furthermore, a case can be decided in the absence of the defendant if the presence is not found necessary:</p> <ul style="list-style-type: none"> <li>when the defendant has absconded after the indictment has been served,</li> <li>when the defendant after having met at the beginning of the trial has left the court without permission from the court,</li> <li>when the sanction of the case can only be a matter of imprisonment no more than 6 months, confiscation, loss of rights, tort liability and the defendant has consented to furtherance of the case,</li> <li>when the defendant can not be convicted to more than 3 months imprisonment or sanction of confiscation, suspension of driver's license or tort liability, or</li> <li>when the proceedings undoubtedly will lead to an acquittal.</li> </ul>

	<p>Unless the defendant has consented thereto the proceeding can only be furthered in accordance with no. 4 above if the defendant has been lawfully summoned and it appears from the summoning that the failure to appear without lawful excuse can result in the conviction of the defendant according to the indictment.</p> <p>Moreover, the defendant has right to have the case reopened, if a request is filed within 4 weeks from the time the judgment is served upon the defendant.</p> <p>(b) In absence of the defendant, it is required that legal counsel is represented.</p>
<b>Estonia</b>	<p>(a) In absentia proceedings are allowed only if the accused at trial is outside of the territory of the Republic of Estonia and absconds appearance in court</p> <p><b>Criminal Procedure Code, article 208. Participation of accused at trial in court hearing</b></p> <p>(1) A criminal matter shall be heard in a session of a court of first instance in the presence of the accused at trial whose appearance in court is mandatory.</p> <p>(2) The hearing of a criminal matter in the absence of the accused at trial is permitted only if the accused at trial is outside of the territory of the Republic of Estonia and absconds appearance in court.</p> <p>(3) Upon court hearing of a criminal matter involving several accused at trial, the hearing of those criminal offences included in the criminal matter which do not involve a specific accused at trial may be conducted without the presence of such accused at trial and his or her criminal defence counsel.</p> <p>(b) There is no such requirement.</p>
<b>Finland</b>	<p>(a) In Finland a court procedure is <i>in absentia</i>, when the accused has been charged with a crime and a summons stating that he does not have to be present has been served to the defendant according to the procedural rules. Maximum penalty this way is fine or 6 months imprisonment. This is being used widely for minor cases, for example drunk driving.</p> <p>(b) No, there is not a requirement for a legal counsel.</p>
<b>France</b>	<p><i>a. Dispositions applicables</i></p> <p><i>* Cette procédure existe d'une part en matière délictuelle (devant le tribunal correctionnel) et en matière contraventionnelle (devant le tribunal de police)</i></p> <p>En cas de non-comparution du prévenu, la décision est rendue par défaut, si la citation n'a pas été délivrée à la personne du prévenu et s'il n'est pas établi qu'il ait eu connaissance de cette citation (article 412 du CPP)</p> <p>Le jugement prononcé par défaut doit être signifié par exploit d'huissier (article 489 du CPP).</p> <p>Lorsque le prévenu forme opposition à l'exécution du jugement, il est non avenu et la personne doit alors être rejugée (article 489 du CPP).</p> <p>Si la signification du jugement a été faite à la personne du prévenu, l'opposition doit être formée dans un délai de 10 jours à compter de la signification, si le prévenu réside en France métropolitaine et dans un délai d'un mois s'il réside hors de ce territoire (article 491 du CPP).</p> <p>Toutefois, s'il ne résulte pas des diligences effectuées pour la signification du jugement que le prévenu a eu connaissance de la signification, l'opposition reste recevable jusqu'à l'expiration des délais</p>

	<p>de prescription de la peine qui est de 5 ans en matière correctionnelle (article 492 du CPP)</p> <p>Si l'opposant ne comparaît pas à la date qui lui est fixée, l'opposition devient non avenue (article 494 du CPP).</p> <p>Le tribunal a toutefois la possibilité d'ordonner le renvoi de l'affaire à une prochaine audience et donner l'ordre à la force publique de rechercher et de conduire l'opposant devant le procureur de la République du siège du tribunal qui, soit le fait comparaître à l'audience de renvoi, soit le met en demeure de s'y présenter, l'opposant ne pouvant dans tous les cas être retenu plus de 24 heures.</p> <p>Si l'opposant, régulièrement mis en demeure, ne comparaît pas à l'audience, l'opposition est non avenue.</p> <p><i>S'agissant de la procédure criminelle, la procédure par défaut est constituée par la procédure de contumace.</i></p> <p>L'article 627 du code de procédure pénale prévoit ainsi que lorsque, après une décision de mise en accusation, l'accusé n'a pu être saisi ou ne se représente pas, dans les dix jours de la "signification" qui en a été faite à son domicile, ou lorsque après s'être présenté ou avoir été saisi, il s'est évadé, le président de la cour d'assises ou, en son absence, le président du tribunal du lieu où se trouve les assises, rend une ordonnance portant que la personne est tenue de se représenter dans un nouveau délai de 10 jours, sinon, qu'il sera déclaré rebelle à la loi, qu'il sera suspendu de l'exercice de ses droits de citoyen.</p> <p>Dans un délai de 10 jours, il est procédé au jugement de la contumace (art 629 du CPP), à moins que la cour surseoit au jugement si une excuse légitime lui est présentée par ses parents ou ses amis (voir également sur ce point sur la question de la représentation par un avocat d'un accusé absent) (Art.631 du CPP).</p> <p>Au cours de l'audience, après la lecture notamment de la décision de renvoi à la cour d'assises et de l'exploit de signification de l'ordonnance ayant pour objet la représentation du contumax, la cour prononce, sur les réquisitions du procureur général, sur la contumace (art.632).</p> <p>L'art 639 du CPP prévoit que si le contumax se constitue prisonnier ou s'il est arrêté avant que la peine soit éteinte par la prescription, l'arrêt et les procédures faites depuis l'ordonnance de se représenter sont anéantis de plein droit et il est procédé à son égard dans la forme ordinaire. La personne est rejugée devant une cour d'assises.</p> <p><i>b. Sur la représentation par un avocat d'un accusé absent</i></p> <p>* En matière contraventionnelle, le prévenu peut toujours en son absence se faire représenter par un avocat (art.544 du CPP)</p> <p>* En matière correctionnelle, l'article 411 du CPP prévoit que le prévenu cité pour une infraction passible d'une peine d'amende ou d'une peine d'emprisonnement inférieure à deux années peut, par lettre adressée au président, demander à être jugé en son absence. Dans ce cas, son avocat est entendu.</p> <p>Il en est de même quelque soit le quantum de la peine si le prévenu est cité par la partie civile.</p> <p>S'agissant du prévenu cité par le ministère public pour un délit puni de plus de deux ans, l'avocat du prévenu doit également être entendu si le prévenu l'a chargé de le représenter.</p> <p>C'est ce qu'a jugé la cour de cassation en posant le principe que "<i>le droit de tout accusé à être effectivement défendu par un avocat figure parmi les éléments fondamentaux du procès équitable et qu'un accusé n'en perd pas le bénéfice du seul fait de son absence aux débats</i>" (assemblée plénière 2 mars 2001, B. C. n°56).</p>
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	<p>Ainsi, quelque soit la quantum de la peine encourue, un tribunal ne peut refuser d'entendre l'avocat du prévenu chargé de le représenter et dont la présence, en cette qualité, a pour effet de donner à la décision un caractère contradictoire (Chambre criminelle, 16 mai 2001 , B.C. n°127)</p> <p>En conséquence, <u>dès lors que le prévenu est non comparant mais qu'un avocat se présente à l'audience en déclarant le représenter, il résulte de la jurisprudence de la cour de cassation qu'il convient de donner la parole à cet avocat, afin de lui permettre, s'il le souhaite, d'assurer la défense de son client sur le fonde de l'affaire.</u></p> <p>Il convient de relever qu'il reste toujours possible à la juridiction, si elle estime nécessaire la comparution du prévenu, de renvoyer le jugement de l'affaire en ordonnant la comparution de l'intéressé et, le cas échéant, si le prévenu encourt une peine d'emprisonnement égale ou supérieure à deux ans, en décernant un mandat d'amener en application des dispositions de l'article 410-1 du code de procédure pénale.</p> <p>* En matière criminelle, suite à la condamnation de la France par la CEDH dans un arrêt KROMBACH c/ France du 13 février 2001 concernant la représentation d'un accusé en son absence et relative à l'art. 630 du CPP qui prévoit l'interdiction absolue de présentation de toute défense par les avocats d'un accusé contumax, la Garde des Sceaux, ministre de la justice a indiqué dans une dépêche aux procureurs généraux du 8 juin 2001 que <u>les cours d'assises doivent, lorsqu'elles procèdent au jugement de contumace, accepter d'entendre les plaidoiries d'un avocat qui se présente pour assurer la défense de l'accusé.</u></p>
<b>Germany</b>	<p>(a) Judgments <i>in absentia</i> are only possible in a small number of clearly defined exceptional cases.</p> <p>If the defendant intentionally and culpably places himself in a condition precluding his fitness to stand trial and if, as a result, he knowingly prevents the proper conduct or continuation of the main hearing in his presence, the main hearing shall, in a case where he has not yet been heard on the charges, be conducted or continued in his absence, unless the court considers his presence to be indispensable. In this way, the trial may only proceed if the defendant, after the opening of the main proceedings, had the opportunity to make statements concerning the charges before a court or a commissioned judge (Section 231a paragraph 1 StPO).</p> <p>As soon as the defendant is again fit to stand trial, the presiding judge shall inform him of the essential contents of the proceedings during his absence unless pronouncement of judgment has commenced (Section 231a paragraph 2 StPO).</p> <p>The court shall decide on the hearing to be held in the absence of the defendant after having heard a doctor as an expert. The decision may already be given prior to the beginning of the main hearing. An immediate complaint against the decision shall be admissible and shall have a delaying effect. A main hearing which has already been commenced shall be interrupted until a decision on the immediate complaint is made (Section 231a paragraph 3 StPO).</p> <p>Defence counsel shall be appointed for a defendant who is not represented by counsel where a hearing may be held without the defendant (Section 231a paragraph 4 StPO).</p> <p>If the defendant, because of disorderly conduct, is removed from the courtroom or committed to prison, the hearing may be held in his absence if the court considers his further presence not to be indispensable and as long as there is a risk that the defendant's presence would be seriously detrimental to the course of the main hearing. In any case the defendant shall be given the opportunity to make a statement on the charges</p>

	<p>(Section 231b paragraph 1 StPO).</p> <p>As soon as the defendant is allowed back, the procedure pursuant to Section 231a paragraph 2 StPO shall apply (Section 231b paragraph 2 StPO).</p> <p>The main hearing may be held in the defendant's absence if he was properly summoned and the summons referred to the fact that the hearing may take place in his absence and if only a fine of up to 180 daily units, a warning with suspended sentence, a driving ban, forfeiture, confiscation, destroying or making an item unusable, or a combination thereof, is to be expected. A higher penalty or a measure of reform and prevention may not be imposed in these proceedings. Withdrawal of driving licence shall be admissible if the defendant has been made aware of this possibility in the summons (Section 232 paragraph 1 StPO).</p> <p>However, the main hearing may not take place without the defendant if the summons was made public (Section 232 paragraph 2 StPO).</p> <p>The record of a judicial examination of the defendant shall be read out at the main hearing (Section 232 paragraph 3 StPO).</p> <p>A judgment given in the defendant's absence must be served on him personally, together with reasons for the judgment, if it is not served on his defence counsel in a permissible manner (Section 232 paragraph 4 StPO).</p> <p>If the main hearing was held without the defendant pursuant to Section 232 StPO, he may, in respect of the judgment and within one week of its service, apply for restoration of the <i>status quo ante</i> under the same conditions as in the case of failure to comply with a time limit; he may at any time request restoration of the <i>status quo ante</i> if he was unaware of the summons to the main hearing. The defendant shall be informed of this right when the judgment is served on him (Section 235 StPO).</p> <p>The defendant may, upon his application, be released from the obligation to appear at the main hearing, if only imprisonment of up to six months, a fine of up to 180 daily units, a warning with suspended sentence, a driving ban, forfeiture, confiscation, destroying or making an item unusable, or a combination thereof, is to be expected. A higher penalty or a measure of reform and prevention may not be imposed in his absence. Withdrawal of driving licence shall be admissible (Section 233 paragraph 1 StPO).</p> <p>If the defendant is released from the obligation to appear at the main hearing, he must be heard on the indictment by a commissioned or requested judge. In this connection he shall be advised of the legal consequences admissible at the hearing in his absence and be asked whether he maintains his application to be released from appearing at the main hearing (Section 233 paragraph 2 StPO).</p> <p>The public prosecution office and defence counsel shall be informed of the date set down for the examination at which the defendant is to be heard; their presence at the examination, however, shall not be required. The records of the examination shall be read out at the main hearing (Section 233 paragraph 3 StPO).</p> <p>In private actions, the defendant may be represented in the main hearing by a lawyer on the basis of a written power of attorney if the court has not ordered him to appear in person (Section 387 paragraph 1, 3 StPO).</p> <p>Where confiscation is possible, the hearing may also, pursuant to Section 435 paragraph 3 No 1 StPO, proceed without the presence of those involved in the confiscation. Pursuant to Section 442 paragraph 1 StPO, this provision also applies where there is a possibility of forfeiture, destruction, rendering unusable and elimination of a situation that is</p>
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	<p>illegal.</p> <p>The following also applies to the appeal authorities:</p> <p>If at the beginning of a main hearing for an appeal on fact and law neither the defendant nor, in cases where this is admissible, a representative of the defendant appeared, and if there is insufficient excuse for their failure to appear, the court shall dismiss an appeal by the defendant on fact and law without hearing the merits. This shall not apply if the court hearing the appeal on fact and law holds a new hearing after the case has been referred back to it by the final court appeal. If a conviction for an individual offence has been overturned, the content of that part of the judgment that has been upheld shall be clearly identified when the appeal on fact and law is dismissed; the penalties imposed may be combined into a new aggregate sentence by the court hearing the appeal on fact and law (Section 329 paragraph 1 StPO).</p> <p>Under the conditions in Section 329 paragraph 1 sentence 1 StPO, a hearing may also be held without the defendant, upon appeal on fact and law by the public prosecution office. An appeal on fact and law by the public prosecution office may in these cases also be withdrawn without the defendant's consent unless the case has been re-referred by the final appeal court (Section 329 paragraph 2 StPO).</p> <p>Within one week after service of the judgment, the defendant may request restoration of the <i>status quo ante</i> under the general conditions specified in Sections 44 and 45 StPO (Section 329 paragraph 3 StPO).</p> <p>The same as in the case of appeal on fact and law applies to proceedings following an objection to a fixed penalty order if neither the defendant nor a representative appeared at the beginning of the main hearing and no sufficient excuse for the non-appearance has been received (Section 412 StPO).</p> <p>Pursuant to Section 350 StPO, appeal proceedings may be carried out without the defendant.</p> <p>The following additional provisions are applicable to proceedings pursuant to the JGG:</p> <p>Pursuant to Section 50 paragraph 1 JGG, the main hearing may only take place without the defendant if this would be admissible in general proceedings, if there are particular reasons for this and the public prosecutor has given his consent.</p> <p>Pursuant to Section 51 paragraph 1 JGG, the presiding judge should exclude the defendant from the proceedings for the duration of any discussions which may result in disadvantages to his social and educational development. He shall advise the defendant of what has happened in his absence if this is necessary for his defence.</p> <p>(b) If the main hearing may be held in the defendant's absence, he shall be entitled but not obliged to be represented by defence counsel with a written power of attorney (Section 234 StPO).</p> <p>Note also that, in accordance with the comments under letter (a), the absence of the defendant and the simultaneous absence of a duly authorised representative may result in legal disadvantages.</p>
<b>Greece</b>	<p>The accused has the right to appear at trial, in accordance to article 20 of the Constitution. In addition, the accused is under obligation to be present during the trial, as set forth in article 340 para. 1 CCrP. If, however, the accused is not present despite his obligation to do so, the trial will proceed as if he was present, even in cases where he will not be represented by a lawyer. This situation leads to constitutional irregularities, as the Constitution only goes so far as to ensure the accused person's right to be heard and not his obligation to be present. It could be</p>

	<p>argued that when the courts are faced with the accused person's absence and considers his presence necessary, the court should postpone the hearing until such presence is ensured.</p> <p>The lawyer of the accused represents the latter even in his absence, unless special provisions apply.</p>
<b>Hungary</b>	<p>(a) Yes. The prosecutor can initiate that the trial be held without the presence of the accused person if the accused is permanently on abroad or at unknown location. An arrest warrant is issued at the same time. Legal defence is compulsory in the proceedings. If the person so convicted appears after that the decision/sentence is made, it is possible to request a new trial, but only in favour of the convicted person.</p> <p>(b) Yes.</p>
<b>Ireland</b>	<p>(a) In general, in relation to trial on indictment (trial by jury for more serious offences), there is no provision for <i>in absentia</i> proceedings. If however a trial has commenced and an accused then absconds the trial can continue in his or her absence. In relation to summary trials of offences (i.e. nonjury trials of minor offences) the case can proceed if the person has been properly notified of the charge and the hearing and has not turned up in court.</p> <p>(b) The defendant in the cases identified at (a) can be represented by his or her lawyers provided of course that they have received adequate instructions from their absent client.</p>
<b>Italy</b>	<p>(a) Yes. Article 420-<i>quater</i> CCP (on the absence of the defendant from the preliminary hearing) states that:</p> <p>“– 1. If the defendant, whether free or on remand, shall fail to appear at the hearing and the conditions as set out in Articles 420(2)[<i>irregularity of summons</i>] 420-<i>bis</i> [<i>lack of knowledge, even if only probable, of the summons by the defendant, in which case the summons is repeated</i>], and 420-<i>ter</i> (1) and (2) [<i>failure of the defendant or his counsel to appear as a result of force majeure, unforeseen circumstances or any other legitimate impediment</i>] the court, having heard the parties, shall proceed <i>in absentia</i>.</p> <p>2. The defendant, when proceeding in his absence, shall be represented by his defence counsel.</p> <p>3. If the defendant appears prior to the adoption by the court of the measures set out in Article 424 (1) [<i>measures concluding the preliminary hearing</i>], the court shall revoke the order to proceed <i>in absentia</i>. In this case, the defendant may make any statements and ask to be questioned.</p> <p>4. The order to proceed <i>in absentia</i> shall be invalid if, at the time at which it is pronounced, there is proof that the defendant's absence is due to his lack of knowledge of the summons in accordance with Article 420-<i>bis</i> or because it is absolutely impossible for him to appear as a result of unforeseen circumstances, force majeure or any other legitimate impediment.</p> <p>5. If the proof of absence indicated in paragraph 4 is obtained after the order set out in paragraph 1 has been pronounced, but prior to the measures set out in Article 424 (1) [<i>measures concluding the preliminary hearing</i>], the court shall revoke this order and, if the defendant has not appeared, shall defer the hearing where necessary of its own motion. Prior instruments shall remain valid, but if the defendant so requests and can demonstrate that the delay in providing proof is not his fault, the court shall rule on the application or renewal of those instruments deemed useful for the purposes of the measures referred to in Article 424(1) [<i>measures concluding the preliminary hearing</i>].</p> <p>6. When the proceedings are against several defendants, the provisions of Article 18(1)(c and d) shall apply [<i>separation of</i></p>

	<p><i>proceedings]</i></p> <p>7. The order to proceed <i>in absentia</i> shall be annexed to the sentence order imposed by the court. That order shall in any case indicate whether the defendant was in default or absent”.</p> <p>(b) Yes.</p>
<b>Latvia</b>	<p>(a) (b) The CPCL Section 247 provides that hearing of the case by first instance court has to take place in presence of the defendant and their presence is mandatory.</p> <p>A case may only be heard in absence of the defendant if the latter is outside the territory of the Republic of Latvia and if they are escaping appearance before the court.</p> <p>If the defendant does not attend, hearing of the case shall be postponed, except if the defendant is outside the territory of the Republic of Latvia and if they are escaping appearance before the court. The court can by resolution instruct to bring the absent defendant before court on compulsory basis, impose or alter the means of safety applied to them as well as to recover from them litigation costs related to the postponed court session except if there are justified reasons for their absence (CPCL Section 248).</p>
<b>Lithuania</b>	<p>a) The Code of Criminal Procedure does provide for the possibility of a case being heard in the absence of the accused. However, this is permitted only where the person in question is outside the territory of the Republic of Lithuania and does not appear in court (Article 246 of the Code of Criminal Procedure). In this case, the case is heard in the usual manner with the exception of the following differences laid down by the Code of Criminal Procedure:</p> <ul style="list-style-type: none"> <li>• The decision on whether the case can be heard in the absence of the accused is taken by the judge while preparing the case for court. If, during the hearing of a case, it becomes apparent that it not possible to judge the case correctly, the hearing will be postponed (Article 433 of the Code of Criminal Procedure).</li> <li>• When hearing a case in the absence of the accused, the defence lawyer may express his opinion on the accusation at the start of the examination of evidence in court after the public prosecutor has read the indictment.</li> <li>• When hearing a case in the absence of the accused, the possibility of a shortened examination of evidence as provided for in the Code of Criminal Procedure may not be used even if the material of the case includes a confession of the accused which the defence lawyer does not dispute (Article 436 of the Code of Criminal Procedure).</li> <li>• After the closing speech, the defence lawyer is able to make final comments. The court then adjourns to make its judgment. The defence lawyer of the accused is informed of the judgment adopted. The judgment is effective from the time at which defence lawyer is so informed. A judgment may be adopted and become effective before the convicted person is detained or surrendered under extradition procedures or in accordance with a European arrest warrant only to the extent that this is possible in the convicted person’s absence (Article 437 of the Code of Criminal Procedure).</li> <li>• A convicted person whose case has been heard in his absence is entitled to appeal and, after the time limit for lodging such an appeal</li> </ul>

	<p>has elapsed, to request that he be present during the appeal hearing of the case. If the judgment has already taken effect, the court which is entitled to hear the appeal may, on its own initiative or at the request of the convicted person or his defence lawyer, decide to suspend implementation of the judgment. If an appeal is lodged by a free convicted person who fails to attend the appeal without reasonable grounds, the court of appeal may hear the case in the absence of the convicted person or reject the appeal.</p> <ul style="list-style-type: none"> <li>• The court of appeal having received an appeal from a convicted person who failed to attend the hearing of the case in the court of first instance must repeat the examination of evidence carried out by the court of first instance during which the criminal conviction was based on the evidence examined, if the convicted person does not agree with the assessment of that evidence during the appeal. The examination of evidence must be repeated whether or not the case has already been heard in the context of appeals by other participants in the proceedings. A judgment adopted on appeal or ruling in cassation proceedings may be referred for appeal in accordance with the normal procedure (Article 438 of the Code of Criminal Procedure).</li> </ul> <p>b) Yes. When hearing a case in the absence of the accused, the presence of a defence lawyer is required in all cases. During the court hearing, the interests of the accused are defended by the defence lawyer appointed by the court if the accused has not previously appointed a defence lawyer himself or no defence lawyer has been invited by the close relatives or family of the accused (Article 435 of the Code of Criminal Procedure).</p>
<b>Luxembourg</b>	<p>a) Oui. L'article 186 du code d'instruction criminelle dispose que lorsque le prévenu ne comparait pas, il sera jugé par défaut. Cependant, la condamnation par défaut sera considérée comme non avenue si, dans les 15 jours de la signification ou de la notification qui en a été faite au prévenu ou à son domicile, celui-ci forme opposition à l'exécution du jugement et notifie son opposition tant au ministère public qu'à la partie civile.(art 187 et 188 ).</p> <p>b) Vu l'article 185 du code d'instruction criminelle la loi exige, en matière correctionnelle, la comparution personnelle du prévenu, qui peut toutefois, avec l'accord du tribunal, se faire représenter par un mandataire dans trois cas :</p> <ul style="list-style-type: none"> <li>- délits n'entraînant pas la peine d'emprisonnement ;</li> <li>- incidents de procédure ou demande de mise en cause ;</li> <li>- accord formel du ministère public et de la partie civile.</li> </ul> <p>Les dispositions de l'article 185 se réfèrent exclusivement au jugement de la prévention et ne concernent pas le jugement des exceptions préjudicielles indépendantes du fond.</p>
<b>Malta</b>	(a) No.
<b>The Netherlands</b>	<p>a. The Dutch legal system provides for in absentia proceedings. If the defendant did not appear to the court session (presence is not required in the Dutch legislation) and the summons is accurately served the court, will declare in default. A court session in default means a court session without the presence of the defendant and proceeds as normal. If the court thinks it is advisable the defendant is present he orders the presence of the defendant (article 278 en 280). The court may also decide to hear the defendant's lawyer, who is authorised to appear for the defendant (article 279).</p> <p>b. There is no requirement that legal counsel represents the defendant in</p>

	<p>his absence. The defendant who does not want to be present at his trial, may authorise his lawyer to conduct his defence. The court has to approve this way of defence and if it seems necessary that the defendant should appear in person, it can order likewise. If the legal counsel is authorised by the defendant, the court session will be in a defended action (article 279).</p>
<b>Poland</b>	<p>(a) As a rule, there is no special form of proceedings in relation with the absent. The accused person's presence at the main hearing is mandatory, yet not in the case of summary proceedings. Basically, they concern cases of a lesser weight (Articles 374, 479 (1) and 485 of the Polish Code of Criminal Procedure).</p> <p>In these cases the absence of an accused who was duly notified of the date of a hearing does not hamper the hearing.</p> <p>A judgement passed in the absence of the accused and his defence counsel is a judgement by default.</p> <p>Also when the accused, having given explanations and having been duly notified of the date of the hearing, fails to appear after the adjournment or postponement, the hearing may be also carried on in his/her absence and according to the standard procedure (Articles 376-7 of the Polish Code of Criminal Procedure). A judgement issued in that case is not a judgement by default.</p> <p>(b) There is no rule in the provisions of the Polish Code of Criminal Procedure for an absent accused person to be replaced by the defence counsel. In the situation of a mandatory defence (Article 79 of the Polish Code of Criminal Procedure), the defence counsel's participation at a hearing is mandatory.</p>
<b>Portugal</b>	<p>(a) In accordance with point 6 of the Portuguese Criminal Code, the law defines cases in which, with rights of defence assured, the presence of the defendant or accused is waived in criminal proceedings, including the judgment hearing. Therefore, with the 1987 reform of proceedings, it became possible to pronounce judgment in the absence of the defendant so long as the latter had provided proof of identity and residence (Article 334 of the Portuguese Criminal Code). Therefore a greater number of cases can be heard in the absence of the defendant. The defendant has been necessarily informed that an audience can legitimately take place in his absence, with non-observance of certain procedural requirements. The general principle is that the presence of the defendant is compulsory in a judgment hearing (Article 332 of the Portuguese Criminal Code), without prejudice to the provision of point 2 of Article 333, and points 1, 2 and 3 of Article 334 of the Portuguese Criminal Code.</p> <p>Therefore, if the defendant is bailed with a condition of identity and residency, and does not appear at the first hearing, and is not present at the new date set, and it is not possible to secure his immediate appearance, the hearing is again adjourned, and the Clerk notifies him of the new date of the hearing, with the warning that, if he fails to appear again, the hearing will take place in his absence (no 2 of article 333 of the Portuguese Criminal Code).</p> <p>(b) In the cases in which a hearing takes place in the absence of the defendant, he is represented, for all possible effects, by the defence lawyer (point 6 of Article 334 of the Portuguese Criminal Code).</p>
<b>Slovak Republic</b>	<p>The special regulation concerning the Procedure against a Fugitive includes the Code on Criminal procedure in its Section 302-306. This procedure shall by apply against a person that avoids criminal proceeding by staying abroad or hiding. This procedure shall not be implemented against a juvenile. The accused shall always have a defence counsel</p>

	during this specific procedure – he shall have the same rights as the accused one. All written agenda addressed to the accused person shall be served only on the defence counsel. The summons for main hearing and public session shall be published as appropriate. Main hearing or a public session shall than be conducted also in the absence of the accused regardless of whether the accused learned about it.
<b>Spain</b>	<p>a) If the defendant is absent and the proceedings are at the investigation stage, they will be continued until considered to be complete by the Judge or competent Court, and the case will then be suspended and filed (Art. 840). If, when the accused is declared <i>in absentia</i>, the trial is pending, it is suspended and the proceedings are filed until the defendant can appear (Art. 841). If there are two or more accused, and not all of them are <i>in absentia</i>, the proceedings will be suspended in respect of those who are absent until they are found and will continue in respect of the others (Art. 842). In shortened proceedings (Art. 793) it is laid down that the holding of the trial necessitates the presence of the defence lawyer and the accused. However, if there are several accused and one of them fails to appear without a legitimate reason, the Judge or the Court may agree to the continuation of the trial for the remaining accused who are present. The unjustified absence of the accused, if he has been summonsed in person or at his domicile, will not constitute a reason to suspend the trial if the Judge or the Court consider that there is sufficient basis for the prosecution, when the penalty sought does not exceed one year's loss of liberty or, in other cases, when its duration does not exceed six years.</p> <p>b) As indicated previously, Spanish legislation lays down (Arts. 118 and 788 of the LECR) that any person accused of a chargeable offence, whether present or absent, may exercise the right of defence once he has been detained or once the proceedings result in his being charged with committing a crime or if he is informed of the existence of the proceedings. When he does not himself appoint a barrister and a solicitor, he has the right to have them appointed officially. The Police, the Office of Public Prosecutions or the Judge will ask the Bar Association to appoint a lawyer to defend him, if the person concerned has not appointed one.</p>
<b>Sweden</b>	<p>(a) The Swedish legal system provides for in absentia proceedings. The Code of Judicial Procedure Chapter 15 Section 15 prescribes the following. –</p> <p>If the defendant fails to appear at a main hearing or appears only by counsel although directed to appear in person shall the court consider if the case can be tried in accordance with Section 15a. If it is not possible to try the case the court shall either direct him to appear in person under penalty of a new default fine, or order that he be brought before the court into custody immediately, or on a later date or put him under detention if there are prerequisites for that measure.</p> <p>Section 15a prescribes the following. – If the matter can be satisfactorily investigated, the case may be adjudicated notwithstanding the fact that the defendant has appeared only by counsel on has failed to appear if:</p> <ol style="list-style-type: none"> <li>1. there is no grounds to impose a criminal sanction other than fine, imprisonment for a maximum of three months, conditional sentence, or probation, or such sanctions jointly,</li> <li>2. after service of the summons upon the defendant, he has fled or remains in hiding in such a manner that he cannot be brought to the main hearing, or</li> <li>3. the defendant suffers from serious mental disturbance and his attendance as a result thereon is unnecessary.</li> </ol>



	<p>In the situations stated in paragraph 2, clause 2, the case may be adjudicated even if the defendant has not been served the notice of the hearing.</p> <p>Procedural issues may be decided even if the defendant has failed to appear in court.</p> <p>(b) The Swedish legislation does not prescribe that the defendant always shall be represented by a legal counsel in his absence. But if a case can not be satisfactorily investigated without a legal counsel, the case can not be tried in the absence of the defendant.</p>
<b>United Kingdom</b>	<p><u>England &amp; Wales:</u></p> <p>(a) At the magistrates court, which deals with less serious offences, the court may proceed in the absence of the accused if it is satisfied that the summons was served on the defendant within a reasonable time. The court cannot sentence a defendant to a term of imprisonment in his absence and may only impose any disqualification after adjourning for reports.</p> <p>Where a defendant is represented by solicitor or barrister, he is not considered to be absent unless there is an enactment or condition of recognisance which expressly requires his presence. The decision to proceed in the absence of the defendant must be exercised judicially, with regard to the entitlement to a fair hearing.</p> <p>If a defendant fails to appear for trial at the Crown Court, a warrant will be issued for his arrest. Once arrested, the court will commit him for trial in custody or on bail. In exceptional circumstances, a charge may be tried in the absence of the defendant if he has previously pleaded.</p> <p>(b) A trial will only proceed in exceptional circumstances as outlined above. If the defendant absconds during the trial, the question whether his counsel remains and the extent to which he can participate are for counsel's absolute discretion.</p> <p><u>Scotland:</u></p> <p>(a) In general, criminal trials in Scotland must be held in the presence of the accused. However, there are certain exceptions to the general rule. For less serious offences, an accused may be tried in his absence where:-</p> <ul style="list-style-type: none"> <li>(i) he misconducts himself in court; or</li> <li>(ii) he fails to appear in court after being duly notified and he is charged with an offence for which a sentence of imprisonment cannot be imposed; or</li> <li>(iii) the statute creating the offence, whatever the punishment it imposes, authorises procedure in the absence of the accused; or</li> <li>(iv) the accused has written to the court pleading not guilty or guilty by letter; or</li> <li>(v) a legal representative appears on behalf of the accused and satisfies the court that he has the accused's authority to plead not guilty or guilty.</li> </ul> <p>For more serious offences an accused may be tried in his absence where he misconducts himself in court.</p> <p>In addition there are separate provisions for those accused who are found to be insane. In such circumstances the court may hold an examination of facts in the absence of the accused to determine beyond reasonable doubt whether the accused did the acts or omissions alleged.</p> <p>(b) Where he is not present at his trial, the accused must be represented in certain circumstances while in others it is at the discretion of the court.</p>

**Post-trial**

<p><b>Question 11</b></p>	<p><b>11) Serving the sentence</b></p> <p><b>(a) If the defendant is from abroad and is found guilty, are there any existing bilateral arrangements enabling transfer to his Home State for serving the sentence? If so, with which States?</b></p> <p><b>(b) How many nationals of other Member States (who are not normally resident) are currently serving sentences in your prisons? What percentage is this of the total prison population?</b></p> <p><b>(c) Are nationals of other Member States currently serving sentences entitled to day release on the same terms as nationals?</b></p> <p><b>(d) Are the parole and other remission of sentence arrangements the same for nationals and non-nationals? Are there cases where parole is conditional on the person concerned leaving the country if he wants to benefit from the system?</b></p> <p><b>(e) Is there provision for expelling non-nationals at the end of their sentence?</b></p>
<p><b>Austria</b></p>	<p>(a) As a party to the Agreement of the Council of Europe on the transfer of convicted persons of 21 March 1983, Austria can transfer persons to their home states to serve the remainder of their sentences if they and the state of enforcement consent to such transfer. In the cases which are described in the supplementary protocol 18 December 1997 to the Agreement and in Article 69 of the Schengen Implementing Agreement of 19 June 1990, the requirement for the consent of the convicted person is waived. Bilateral treaties concluded with states which are party to the Agreement of 21 March 1983 shall continue to be effective.</p> <p>Austria also has bilateral agreements with the successor states to former Yugoslavia and with Thailand on the execution of court rulings in criminal cases.</p> <p>On the basis of their domestic legal situation and subject to the requirements of the Extradition and Assistance between Courts Act (ARHG), execution can also be transferred to other states on a reciprocal basis. In these cases too the convicted person must consent to his transfer to the other state.</p> <p>(b) Of a current prison population of about 5,200, 170 persons are nationals of other Member States. The proportion of these which is not normally resident in Austria is not known.</p> <p>(c) Foreign nationals convicted in the Austrian courts are basically entitled to the benefit of the same provisions as Austrian nationals (day release: §§99a and 147 of the Code of Criminal Procedure; parole: §99 of the Code)à. In practice, however, it has to be borne in mind that there is a greater risk of prisoners absconding.</p> <p>(d) In Austrian criminal law the expressions “conditional release”, “remission” and “partial suspension” do not exist. Conditional waiver of sentence (§43 of the Criminal Code) is built into the sentence (§492 of the Code of Criminal Procedure). A decision on “conditional release” (NB: slightly different expression from the first in German, but same meaning) (§46 of the Code of Criminal Procedure) is taken while sentence is being served.</p> <p>The effect of conditional waiver is that the prisoner is not required to serve the sentence in the event of good conduct during a probationary period determined by the court. The conditions both for conditional waiver of sentence and for withdrawing it are the same for Austrian and foreign nationals.</p> <p>Foreign nationals can be conditionally released on the same terms as Austrian nationals. This means that subject to certain conditions they can</p>

	<p>be released from serving a remaining portion of their sentence but serve probation instead. In certain circumstances, which are identical for Austrian and foreign prisoners, such as where they commit a further offence during the period of release or wilfully fail to comply with an order made by the court, the conditional release can be withdrawn and the prisoner must serve the remaining portion of his sentence.</p> <p>Austrian and foreign nationals are eligible on the same terms for postponement of sentence where they are incapable of serving it, but the question of the risk of abscondment is of great importance here (§5(3-Z-2) of the Code of Criminal Procedure). The same conditions also apply in all other respects.</p> <p>Austrian criminal law makes no provision for conditional waiver or release being subject to leaving the country.</p> <p>(e) Yes, where the conditions laid down in the Aliens Act are met and the aliens control police order the corresponding measures. The courts have no jurisdiction in this respect.</p>
<b>Belgium</b>	<p>(a) Il existe un accord multilatéral à cet égard, la Convention du Conseil de l'Europe du 21 mars 1983 sur le transfèrement des personnes condamnées et un accord bilatéral, la Convention belgo-marocaine du 7 juillet 1997 sur l'assistance des personnes détenues et le transfèrement des personnes condamnées.</p> <p>(b) La liste ci-dessous reprend les chiffres des personnes incarcérées selon leur nationalité dans les établissements pénitentiaires belges en date du 15 mars 2002. Il n'est pas possible de vérifier si ces personnes sont des résidents habituels ou non en Belgique.</p> <p>Ressortissants étrangers en détention au 15 mars 2002 (tableau en annexe)</p> <p>Les ressortissants des autres Etats membres qui purgent une peine peuvent-ils bénéficier d'un congé dans les mêmes conditions que les nationaux ?</p> <p>(c) Les demandes de congés pénitentiaires introduites par les condamnés de nationalité étrangère sont examinées en fonction des différentes situations légales au regard de leur séjour en Belgique. Vu sous cet angle, les ressortissants étrangers ne bénéficieront pas nécessairement de congés sous les mêmes conditions que les personnes de nationalité belge.</p> <p>La circulaire ministérielle nr.1504 relative au congé pénitentiaire aux étrangers du 10 juin 1986 stipule les conditions et procédures en la matière. Aux termes de celle-ci, les ressortissants communautaires disposant d'un titre de séjour ou d'établissement valide et ne faisant pas l'objet d'une décision de l'office des étrangers, doivent être mis sur le même pied que les Belges en ce qui concerne l'octroi de congé pénitentiaire. En revanche, les ressortissants communautaires ne bénéficiant pas de ce titre ne peuvent pas bénéficier de congé. La circulaire règle également différentes alternatives dans le cas où l'intéressé fait l'objet d'une proposition de renvoi ou d'expulsion.</p> <p>d) En vertu de la loi du 5 mars 1998 relative à la libération conditionnelle, toute personne détenue qui remplit les conditions de temps est admissible à la libération conditionnelle. Dès lors, tout détenu doit être fixé au « registre des fixations de la conférence du personnel » lorsqu'il entre dans les conditions.</p> <p>Dans la pratique, deux exceptions sont faites par rapport à la libération anticipée d'un détenu.</p> <p>Les condamnés dont le total des peines principales n'excède pas les trois ans</p> <p>Pendant l'élaboration de la loi sur la libération conditionnelle, il a été</p>

	<p>indiqué à plusieurs reprises que le système des libérations provisoires, qui est d'application aux condamnés dont le total des peines principales n'excède pas les trois ans, devait être maintenu.</p> <p>La libération provisoire est appliquée par le directeur de l'établissement pénitentiaire lorsque le détenu répond aux conditions de temps suivantes :</p> <p>Condamnés dont le total des peines principales n'excède pas les quatre mois : après 15 jours de détention ;</p> <p>Condamnés dont le total des peines principales excède les quatre mois, mais n'excède pas les sept mois : après une détention d'un mois ;</p> <p>Condamnés dont le total des peines principales excède les sept mois, mais n'excède pas les huit mois : après une détention de deux mois ;</p> <p>Condamnés dont le total des peines principales excède les huit mois, mais n'excède pas un an : après une détention de trois mois ;</p> <p>Condamnés dont le total des peines principales excède un an, mais n'excède pas les trois ans: aussitôt la date d'admissibilité pour la libération conditionnelle atteinte, sans tenir compte des prescriptions concernant les minima de trois et six mois prévus dans l'article 2, a et b de la loi du 5 mars 1998 relative à la libération conditionnelle.</p> <p>Lorsqu'un condamné de nationalité étrangère, dont le total des peines principales n'excède pas les trois ans, est libéré provisoirement alors qu'il n'est pas en possession d'un titre de séjour valable, le directeur contacte l'Office des Etrangers pour les informer de la décision de libération.</p> <p>Ainsi, l'Office des Etrangers peut prendre ou non une décision de tenir l'intéressé à disposition. Cette procédure est décrite à l'article 7 alinéa 3 de la loi du 15 décembre 1980 sur l'accès au territoire, l'établissement et l'éloignement des étrangers, modifiée par la loi du 15 juillet 1996 et par la loi du 22 avril 1999.</p> <p>Etrangers</p> <p>La circulaire ministérielle n° 1696 du 26 février 1999 précise que les condamnés de nationalité étrangère, dont le total des peines principales excède les trois ans et qui font l'objet d'un arrêté royal exécutoire, d'un arrêté ministériel de renvoi exécutoire ou d'un ordre de quitter le territoire, ne sont pas admissibles à la procédure de libération conditionnelle.</p> <p>Par rapport à cette catégorie de détenus, le système de libération provisoire en vue d'éloignement du pays est d'application. Le Ministre de la Justice décide en la matière, après qu'il ait été établi que le condamné répondait aux conditions d'admissibilité (temporelles) et éventuellement à d'autres conditions telles que le remboursement de parties civiles.</p> <p>Lorsque cette suspension de la peine est accordée, la décision est communiquée à l'Office des Etrangers qui prendra la décision d'éloignement. Tant que cette décision n'est pas prise, le condamné restera en prison pour purger sa peine.</p> <p>Il n'y a aucune hypothèse prévue qui permette de subordonner la libération conditionnelle au départ définitif de la personne pour qu'elle puisse bénéficier de cette libération.</p> <p>(e) Non, aucune disposition de cette nature existe dans la législation belge. Néanmoins la pratique montre que dans certains cas, la mise en application des procédures décrites ci-dessus, peut entraîner une expulsion en fin de peine. Il s'agit de dossiers pour lesquels la libération provisoire a été refusée à la lumière de certains éléments considérés comme des contre-indications, ou de dossiers où l'Office des Etrangers statue définitivement alors que les délais de mise à disposition et la peine de prison viennent à terme.</p>
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<b>Cyprus</b>	<p>(a) Yes, there exist bilateral arrangements enabling the transfer of defendants to their Home States. The Republic of Cyprus has signed the Convention on the Transfer of Sentenced Persons (ET5 112) and there exist bilateral agreements between the Republic of Cyprus and Jordan, Lebanon, Libya and Russia.</p> <p>(b) Fourteen (14) nationals of other Member States out of 290 (that is the total amount of prison population) are currently serving sentences in Cyprus. This consists a percentage of 4,8%.</p> <p>(c) Yes, they are.</p> <p>(d) Yes, they are. Regarding cases of non nationals, the parole and other remission of sentence arrangements are conditional, depending on the person who is leaving Cyprus.</p> <p>(e) As a rule and according to the Aliens and Immigration Law, the Chief of Immigration Office shall expel all non nationals at the end of their sentence.</p>
<b>Czech Republic</b>	<p>(a) The Czech Republic has ratified the European Convention on the transfer of sentenced persons and its additional protocol. It came into effect for the Czech Republic in 1992.</p> <p>Concerning the bilateral arrangements, there exists a bilateral arrangement enabling transfer of convicted person to his Home State for serving the sentence with the former republic of Yugoslavia.</p> <p>Furthermore, in 1980 the Czech Republic signed and ratified the Convention on transfer of convicted persons to their Home State whose contracting parties were Czechoslovakia, Bulgaria, Cuba, Mongolia, Hungary, GDR, Poland and Soviet Union.</p> <p>(b) (March 2003) Total number of prisoners: 16. 643 (3.484 in custody) Total number of foreigners serving sentences in our prisons: 1.797 (484 in custody)</p> <p>(c) Yes.</p> <p>(d) Concerning the first part of the question: Yes, the parole and other remission of sentence arrangements are the same for nationals and non-nationals.</p> <p>Concerning the second part of the question, the minister of justice may decide on waiver of execution of imprisonment or its part if the convicted person has been or should be surrendered or expelled.</p> <p>(e) Yes, the Criminal Proceedings Code provides for such regulation. If the expulsion is imposed together with the punishment of imprisonment, the execution of the punishment of expulsion will be carried out immediately after the end of the sentence of the concerned person. The police of the Czech Republic pays the costs connected with the execution of expulsion, unless paid by the convicted person, with an exception of the execution of custody.</p>
<b>Denmark</b>	<p>(a) Denmark is party to the Council of Europe Convention of 1983 on the Transfer of Sentenced Persons (ETS no. 112), which is also ratified by non-member states such as USA and Canada. Furthermore, Denmark has bilateral agreements with Thailand, Venezuela and Cuba. The latter agreement is not ratified yet.</p> <p>(b) According to statistics of the Prison and Probation Service 75 persons who are nationals of other EU Member States are serving time in the Danish prison system. This equals approx. 2 % of the total prison population.</p> <p>(c) Nationals of other Member States are entitled to day release on the same conditions as Danish citizens. In cases where the person will be</p>

	<p>expelled after serving the sentence, this will be taken into account in the administrative assessment of whether to allow day release.</p> <p>(d) Generally, the rules of parole are the same for Danes and foreign nationals. In cases where the person is going to be expelled, parole is, however, normally allowed after serving 7/12 of the sentence, while the general rule allows parole after serving 2/3 of the sentence.</p> <p>In cases where extradition has been ordered by the court, parole will be conditional of the person concerned leaving the country. The practical arrangements are made with the police.</p> <p>(e) As mentioned above the question of expulsion of persons after the end of their sentence, is a matter to be decided by the courts in connection with the judgment in the cases where it is a sanction caused by the criminal act. Different rules apply in case of extradition in the ordinary rules of immigration law.</p> <p>The question is not understood to require a thorough description of the material rules of extradition in Danish law.</p>
<b>Estonia</b>	<p>(a) Estonia has a bilateral agreement on the transfer of sentenced persons in force with Poland. But Estonia is a party to the European Convention on the Transfer of Sentenced Persons (Strasbourg 1983).</p> <p>(b) One Danish citizen is under psychiatric coercive treatment, but has already applied for a transfer to Denmark. The transfer case is not decided yet.</p> <p>(c) Yes, if they have a permanent place of residence in Estonia. There are no separate rules for the release of nationals or non-nationals.</p> <p>(d) Estonia has no separate rules for parole and probation for nationals and non-nationals. The same rules apply.</p> <p>(e) Article 54 of Estonian Penal Code provides possibilities for expelling non-nationals at the end of their sentence.</p> <p>§ 54. Expulsion</p> <p>(1) If a court convicts a citizen of a foreign state of a criminal offence in the first degree and imposes imprisonment, the court may impose expulsion with prohibition on entry within ten years as supplementary punishment on the convicted offender. If the spouse or a minor child of the convicted person lives with him or her in the same family in Estonia on a legal basis, the court in its judgment shall provide reasons for imposition of expulsion.</p> <p>(2) Expulsion shall not be imposed on a convicted citizen of a foreign state who at the time of commission of the criminal offence was less than 18 years of age.</p>
<b>Finland</b>	<p>(a) Finland has bilateral agreements for transfer at least with other Nordic countries (Norway, Sweden, Denmark and Iceland) and Russia. In addition to that Finland has ratified Council of Europe convention on the transfer of sentenced persons (ETS 112) from year 1983 as well as it's additional protocol (ETS 167) from year 1997.</p> <p>(b) On 1.6.2002 there are in total 187 foreign prisoners (including non-member states) serving a sentence and 111 in detention waiting for trial or investigation to end. There is no statistics on which of these prisoners are permanently living in Finland and which have only been sentenced here. Of all the foreigners convicted of a crime in Finland (fines, imprisonment) about 2/3 are residents. Total amount of prisoners on 1.6.2002 was 3.401, the percentage of foreign prisoners is 8,8 %.</p> <p>(c) Yes.</p> <p>(d) Same rules apply for national and non-nationals.</p>

	<p>(e) According to the section 40 of the Foreigners Act 378/1991 (unofficial translation) a foreigner (excluding nationals of EES-countries) can be expelled if he has been found guilty of a crime where the statutory penalty is one year imprisonment or more, or he has continuously committed crimes.</p>
<b>France</b>	<p>Questions ne relevant pas de la compétence du bureau.</p>
<b>Germany</b>	<p>(a) There is no obligation, only a possibility, of petitioning a foreign state for a sentence or other sanction imposed on a foreign national to be served in the Home State.</p> <p>Instruments significant to international execution assistance are the Convention on the Transfer of Sentenced Persons of 21 March 1983 (FLG 1991 II p. 1006, 1007; 1992 II p. 98) and Articles 67 to 69 of the Schengen Convention of 19 June 1990 on the gradual abolition of controls at the common frontiers (Convention on the application of the Schengen Agreement – FLG 1993 II p. 1010, 1013; 1994 II p. 631; 1996 II p. 242).</p> <p>In terms of bilateral agreements, there is a Treaty between the Federal Republic of Germany and the Kingdom of Thailand concerning the transfer of offenders and on cooperation in the execution of judgments [Vertrag zwischen der Bundesrepublik Deutschland und dem Königreich Thailand über die Überstellung von Straftätern und über die Zusammenarbeit bei der Vollstreckung von Strafurteilen] (FLG 1995 II p. 2010, 1996 II p. 1220).</p> <p>(b) This question cannot be answered in precise terms because, although the statistics identify nationals of other Member States serving prison sentences in Germany, there is no differentiation as to whether these persons are permanently or only temporarily resident in the Federal Republic. According to prison statistics gathered on 31 March 2001, 22 523, i.e. 29.8%, of 75 537 prisoners were nationals of other states. However it is not possible to specify the number of nationals of other Member States not normally resident in the Federal Republic.</p> <p>(c) In terms of forms of imprisonment, the Prison Act [Strafvollzugsgesetz, StVollzG] provides for several measures which allow prisoners temporary release.</p> <p>In the first instance, section 10 paragraph 1 StVollzG provides for open prisons, which, as a form of enhanced conditions, allow prisoners the greatest possible degree of outward orientation. A condition for committal to an open prison is that the prisoner must satisfy the special requirements for open prisons, i.e. he is suitable for open prison and there is no risk of him evading execution of the prison sentence or misusing the opportunities of open prison in order to commit further offences.</p> <p>As a form of enhanced conditions, Section 11 paragraph 1 No 1 StVollzG provides for day release (unsupervised) or outside employment (supervised) in cases where the prisoner has the concrete opportunity of regular employment outside the prison and such employment complies with rehabilitation programmes.</p> <p>Unescorted and escorted temporary absence, as provided for in Section 11 paragraph 1 No 2 StVollzG, allow the prisoner temporary release from the prison in particular cases.</p> <p>Pursuant to Section 11 paragraph 2 StVollzG, he must in all specified cases agree to the enhanced conditions and there must not be any risk of him evading execution of the prison sentence or misusing the enhanced conditions in order to commit further offences.</p> <p>Finally, pursuant to Section 13 paragraph 1 StVollzG, the prisoner may be given up to 21 calendar days' leave from prison in one year, provided</p>

	<p>there is no risk of him evading execution of the prison sentence or misusing the enhanced conditions in order to commit further offences (standard leave). Another form of leave is leave in preparation for release pursuant to Sections 15, 124 StVollzG.</p> <p>In principle, prisoners who are nationals of other states have the same entitlement as German prisoners to open prison and enhanced conditions. However, for reasons of legislation concerning foreign nationals, the Federal administrative provisions governing the StVollzG contain restrictions on prisoners subject to measures under legislation concerning foreign nationals.</p> <p>For example, No 1 paragraphs 1 b) and c) inter alia of the administrative provisions relating to Section 10 StVollzG lay down that prisoners ordered to be held on remand pending extradition or who have an executable extradition order against them for the territorial scope of the Prison Act and who are to be deported from custody are precluded from open prison.</p> <p>Prisoners being held in remand pending deportation are also precluded. Finally, pursuant to No 2 d) of the administrative provisions, inter alia, prisoners are usually unsuitable for open prison if extradition proceedings are pending against them.</p> <p>Pursuant to No 6 paragraph 1 b) and c) of the administrative provisions relating to Section 11 StVollzG, prisoners are also precluded from the enhanced conditions of outside employment, day release and unescorted temporary absence listed in Section 11 paragraph 1 No 1 and 2 StVollzG if they have been ordered to be held on remand pending extradition or if there is an executable extradition order against them for the territorial scope of the Prison Act or if they are to be deported from custody.</p> <p>In addition, pursuant to No 7 paragraph 2 d) of the administrative provisions, prisoners are usually considered unsuitable for the specified enhanced conditions if extradition proceedings are pending against them.</p> <p>Finally, pursuant to No 3 paragraph 1 b) and c) of the administrative provisions relating to Section 13 StVollzG, the granting of leave is also precluded if a prisoner has been ordered to be held on remand pending extradition or if there is an executable extradition order against them for the territorial scope of the Prison Act or if they are to be deported from custody.</p> <p>Pursuant to No 4 paragraph 2 e) of the administrative provisions, prisoners are usually considered unsuitable for leave if extradition proceedings are pending against them.</p> <p>In so far as the administrative provisions relating to Sections 10, 11 and 13 StVollzG stipulate that, in exceptional cases, measures under the legislation concerning foreign nationals against prisoners must not stand in the way of committal to an open prison or the ordering of enhanced conditions, the public authority responsible for aliens shall be consulted prior to a decision being made in such cases.</p> <p>(d) Pursuant to Section 456a StPO, the law enforcement authorities may dispense with executing a prison sentence, default imprisonment or a measure of reform and prevention if the convicted person is to be extradited to a foreign government <u>or</u> expelled from the territorial scope of this Federal statute.</p> <p>If the extradited person or deportee returns, execution of sentence may be imposed retrospectively. In connection with remission of sentence, the law enforcement authorities may order retrospective execution of sentence if the extradited person or deportee returns, and issue a warrant of arrest, a committal order or a description notice for this purpose. The</p>
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	<p>convicted person shall be informed thereof.</p> <p>The decision, whether <i>ex officio</i> or on application of the convicted person, must weigh up the interests of the convicted person against the reasons against remission of sentence. In particular, the circumstances of the offence, the seriousness of the guilt, the portion of the sentence served to date and public interest in retrospective execution shall be taken into account. The family and social circumstances of the convicted person shall also be taken into account. The Bundesländer have drawn up guidelines which, pursuant to Section 17 paragraph 1 of the Penal Execution Order [Strafvollstreckungsordnung, StVollstrO], are to be taken into account in the decision. In accordance with this, remission of the remainder of the sentence is, in principle, made dependent on half of the sentence having been served.</p> <p>(e) Pursuant to the division of competence laid down in the Basic Law, legislation concerning foreign nationals is a matter for the Bundesländer. A decision on extradition of an offender who is a foreign national is thus taken <i>ex officio</i> by the local authority responsible for aliens of each Bundesland as part of the administrative proceedings. The authority is advised by the competent body (public prosecution office, criminal court) of the judgment of the criminal court and, where appropriate, of the status of the prison sentence (No 4 of the Order on notifications in criminal cases [Anordnung über Mitteilungen in Strafsachen, MiStra]).</p> <p>The German Aliens Act [Ausländergesetz] differentiates between three types of deportation depending on the nature and severity of the offences and the dangerousness of the offender. Where the offender is particularly dangerous, extradition pursuant to Section 47 of the applicable Aliens Act is either mandatory (paragraph 1) or usual (paragraph 2). In less serious cases, the decision on extradition rests with the authority (Section 44, 46 Aliens Act).</p> <p>Extradition is effected by administrative order after hearing the foreign national concerned. Protests and appeals against the order have a delaying effect.</p> <p>As an executable extradition order renders an existing residence permit held by the foreign national invalid, the person concerned is obliged to leave the country pursuant to Section 42 paragraph 1 of the Aliens Act. A foreign national who is obliged to leave Germany will be deported if the obligation to leave the country is executable and voluntary compliance with the obligation is uncertain or monitoring of departure is required (cf. Section 49 paragraph 1 of the Aliens Act).</p>
<b>Greece</b>	<p>Greece has ratified a limited number of bilateral conventions on the transfer of sentenced aliens, the most recent ones being with the United States of America (law 2804/2000) and Canada (law 2746/1999). It should be noted that Greece is also party to the Council of Europe Convention on the Transfer of Sentenced Persons (ratification: 17 December 1987, entry into force: 1 April 1988).</p> <p>Υπουργείο Δικαιοσύνης-Στατιστική Υπηρεσία!!!!</p> <p>Article 54c of the Penitentiary Code explicitly provides that the alien status of a prisoner does not exclude the granting of short-term releases. Article 3 of the Penitentiary Code again provides that discrimination based on race, colour, national or social origin, religion, financial state or ideological orientation is forbidden, while adding that any special treatment a prisoner may receive will be made if it is justifiable by his legal or factual position and only in his favour and to further ameliorate his special needs arising from his present situation.</p> <p>Non-nationals may be expelled prior or after their conviction or the</p>

	conclusion of their sentence, if so decided by the competent administrative authorities. This issue does not form part of the criminal proceedings as such.																														
<b>Hungary</b>	<p>(a) Yes. Bilateral agreements are not necessary. The Minister of Justice may require declaration of reciprocity from the foreign state, also, for the foreign state's initiative he can make a declaration of reciprocity. Lack of reciprocity, the Minister of Justice or the Chief Prosecutor decides in agreement with the Minister of Foreign Affairs upon the fulfilment of foreign request. If the prisoner or his legal counsel wishes the transfer to the Home State, an application has to be submitted to the Minister of Justice through the Prison Service HQ.</p> <p>(b)</p> <table> <tr><td>Ireland</td><td></td></tr> <tr><td>Great Britain</td><td></td></tr> <tr><td>France</td><td>1</td></tr> <tr><td>Belgium</td><td></td></tr> <tr><td>The Netherlands</td><td>3</td></tr> <tr><td>Denmark</td><td>2</td></tr> <tr><td>Sweden</td><td></td></tr> <tr><td>Finland</td><td>1</td></tr> <tr><td>Spain</td><td></td></tr> <tr><td>Portugal</td><td></td></tr> <tr><td>Italy</td><td>3</td></tr> <tr><td>Greece</td><td>1</td></tr> <tr><td>Austria</td><td></td></tr> <tr><td>Germany</td><td>15</td></tr> <tr><td>Luxemburg</td><td></td></tr> </table> <p>Total number of prisoners: 17.627.  Number of prisoners from the EU member states: 25  Percentage: 0,14%</p> <p>(c) In this regard, Hungarian law does not differentiate between Hungarian and foreign citizens, the same rules apply with no regard to citizenship. Nevertheless, the permission of short-term prison leaves, and also the application of the probation depends on the consideration of the competent person for decision, and in the process of consideration he evaluates all circumstances.</p> <p>(d) See the answer above.</p> <p>(e) Yes, legal provisions exist, expulsion is not automatic though. After passing the sentence, non-Hungarian are expelled from the territory of Hungary only if the court or the immigration office has so ordered.</p>	Ireland		Great Britain		France	1	Belgium		The Netherlands	3	Denmark	2	Sweden		Finland	1	Spain		Portugal		Italy	3	Greece	1	Austria		Germany	15	Luxemburg	
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<b>Ireland</b>	<p>(a) There are no bilateral arrangements in place in this regard at present. The Council of Europe Convention on the Transfer of Sentenced Persons is used to transfer sentenced prisoners who wish to return to their Home State.</p> <p>(b) On 5 February, 2002, there were a total of 183 foreign nationals in prison custody. This figure includes both sentenced and remand prisoners.  The number of foreign nationals in custody on this date represented 5.8% of the total prison population (3131).</p> <p>(c) There is no entitlement to day release for national or non national prisoners. Temporary release is a concession granted at the discretion of the Minister for Justice, Equality and Law Reform. All prisoners may be considered regardless of their nationality.</p> <p>(d) National and non national prisoners are treated equally in regard to</p>																														

	<p>remission of sentence and parole applications. In some instances, non national prisoners apply for and are granted early release on condition they leave the jurisdiction.</p> <p>(e) Non Nationals may be deported at the end of their prison sentence subject to the provisions of the 1999 Immigration Act.</p>
<b>Italy</b>	<p>(a) At present, the only agreement is with Morocco. Agreements are being negotiated with Albania and Tunisia</p> <p>(b) As regards the information requested, according to data surveyed on 31 March 2002, the prison population totalled 57 114, of whom 16 940 were foreign nationals, but it is not possible to break this overall figure down to ascertain the number of Member State nationals currently serving a sentence in Italian prisons and, therefore, the percentage of the above total for which they account.</p> <p>(c) Yes.</p> <p>(d) Yes.</p> <p>(e) Under Article 235 of the CCP, it is possible to expel foreigners as a security measure (measure imposed by the criminal courts when the person has been assessed as a threat to society) “in the cases set out in law” (for instance, foreigners sentenced for drugs-related offences: see Article 86 of the consolidated law on narcotics, Presidential Decree 309 of 9 October 1990) or in any case if sentenced to imprisonment of a period of not less than 10 years.</p>
<b>Latvia</b>	<p>(a) The committal of convict to serve the punishment abroad is regulated by the section 45 of Latvian CPC, which p.548 provides for, that the ground to commit person, being convicted in Latvia for serving the sentence abroad is a foreign competent institution application to extradite or competent Latvian institution application to take over the convict. Latvia has joined to <i>march 21, 1983 European Council Convention on extraditing the convicts for serving punishment</i> and has concluded one bilateral agreement – <i>march 4, 1993 ‘Treaty between Latvian Republic and Russian Federation on extraditing of convicts for serving the punishment’</i>.</p> <p>In the same time, Latvian CPC provides for in the p.473 p.3, that in cases there is not an agreement with foreign country on criminal legal cooperation (one of the form of it is extradition of the convict for serving the punishment), the right to apply or receive application from foreign country has Justice Minister or Attorney-General adapting the reciprocity principle.</p>
<b>Lithuania</b>	<p>a) Yes. Such bilateral arrangements have been concluded with Belarus, Azerbaijan and the Russian Federation.</p> <p>b) On 1 June 2005, four nationals of other Member States were serving sentences in Lithuania. This is 0.06% of the total prison population.</p> <p>c) Yes. Article 3(2) of the Code of the Republic of Lithuania on the service of sentences of penalties states that the laws on the service of sentences are applicable to all persons serving sentences in the Republic of Lithuania. This means that the laws on the service of sentences are applicable to nationals of the Republic of Lithuania, nationals of other states and stateless persons serving a sentence in Lithuania.</p> <p>When applying the laws on the services of sentences, the principle is applied that all convicted persons are equal irrespective of where they come from, their gender, their social and financial situation, their nationality or race, their political opinions or convictions, their level of education, their religious or other beliefs, their genetic characteristics, whether or not they suffer from a disability, their sexual orientation, the type and nature of the act committed, their place of residence and any</p>

	<p>other circumstances not referred to in the laws of the Republic of Lithuania (Article 6 of the Code on the service of sentences entitled “Equality of convicted persons when applying the principles of laws on the service of sentences”).</p> <p>d) Yes. As stated above, the laws on the service of sentences are applicable to all persons serving sentences irrespective of whether they are nationals of the Republic of Lithuania or not. Parole and other remission arrangements are the same for all people serving a prison sentence in Lithuania. The laws of the Republic of Lithuania do not provide for cases in which a person may be released from a penalty on the condition that he leaves the country.</p> <p>e) The grounds for expulsion from Lithuania are laid down in the Law of the Republic of Lithuania on the legal status of aliens (No IX-2206 of 29 April 2004), and the procedure for the expulsion of aliens is laid down by Decree No 1V-429 of the Minister of Internal Affairs of 24 December 2004. It should be noted that the Law does not state that the serving of a sentence is in itself grounds for expulsion of an alien. An alien who has served his sentence may be expelled from Lithuania only where his presence in the country is a threat to state security or public order or the alien was in Lithuania illegally (Article 126 of the Law on the legal status of aliens).</p>
<b>Luxembourg</b>	<p>a) Le Luxembourg a ratifié la convention européenne sur le transfèrement des personnes condamnées du 21 mars 1983, signée à Strasbourg par la loi du 31 juillet 1987.</p> <p>b) En date du 24 mai 2002, 77 prisonniers non résidents au Grand-Duché purgeaient une peine au Centre Pénitentiaire de Schrassig. Cela représente 23,4% de la population carcérale totale.</p> <p>c) Cette faveur peut être accordée aux détenus ayant leur domicile ou leur résidence au pays (art 7 de la loi du 25 juillet 1986 ).</p> <p>d) D’après l’article 634 les dispositions concernant la suspension simple et le sursis simple sont applicables respectivement aux prévenus et condamnés n’habitant pas le Grand-Duché.</p> <p>Celles concernant la suspension probatoire et le sursis probatoire sont applicables à l’étranger n’habitant pas le Grand-Duché, s’il a sa résidence habituelle sur le territoire d’un pays qui a ratifié la Convention Européenne pour la surveillance des personnes condamnées ou libérées sous condition ou qui est lié au Grand-Duché par une convention relative à l’exécution des peines ou à la suspension probatoire.</p> <p>e) Il n’existe pas de disposition légale à ce sujet, mais de telles expulsions ont lieu en pratique dans certains cas.</p>
<b>Malta</b>	<p>(a) European countries and Libya.</p> <p>(b) (Prisons department)</p> <p>(c) --</p> <p>(d) --</p> <p>(e) Yes.</p>
<b>The Netherlands</b>	<p>On the basis of a treaty a sentenced person can be transferred to his home state, as far his home state is also a party of the treaty. The Netherlands is a party to :</p> <p>the European convention of the supervision of conditionally sentenced persons or conditionally released offenders (1964);</p> <p>the European Convention of the international validity of criminal judgements (1970);</p> <p>The Convention on the transfer of sentenced persons (1983).</p> <p>Besides there are two existing bilateral treaties on the transfer of sentenced persons: with Morocco and Venezuela.</p>

	<p>According to Dutch law the transfer to the home country can also take place without a treaty.</p> <p>In the year 2000 there were 422 people in Dutch prisons with the nationalities of North, West and South Europe. This is 3,9% of the prison population.</p> <p>Nationals of other member states are currently not serving sentences on the same terms as nationals. In the Netherlands we have a system of detention in several phases in decreasing severe circumstances/ regimes. If a sentenced person is serving his time showing good behaviour, he can be placed in a less strict regime. However this regime is not available to nationals of other member states (article 3 regulation selection, placement and transfer of prisoners).</p> <p>d. In the Netherlands there are two remissions of sentence arrangements. First there is the early release, available to all prisoners (nationals and non-nationals) once they have served 2/3 of their sentences. Second there exist arrangements which are comparable to a system of conditional release, granted on an individual basis, albeit under a different kind of legal regulation, and part of the system of phased detention. This conditional release is not available for “undesirable aliens” (aliens who need to leave the Netherlands according to the Immigration laws).</p> <p>e. The Dutch legislation provides in expelling non-nationals at the end of their sentence. If a non-national is declared an “undesirable alien” according to an administrative procedure, he will be expelled after serving his sentence. Between the release out of prison of the “undesirable alien” and his deportation, he can be held in custody (article 58 and 59 Immigration Law).</p>
<b>Poland</b>	<p>(a) Poland is a party to the Convention on the transfer of sentenced persons and, what is more, there have been the following bilateral treaties concerning the transfer of sentenced persons for the purpose of serving the punishment in the State of origin concluded with: Austria, Belarus, Egypt, Estonia, Iraq, the Democratic People’s Republic of Korea, Libya, Lithuania, Latvia, Russia, Syria, Thailand, Turkey, Ukraine, Vietnam.</p> <p>(b) Number of EU nationals currently serving sentences in Polish prisons: 36 Total number of prisoners (including provisionally arrested): 82867 (31 May 2005)</p> <p>(c) There are no provisions that differentiate the issue of serving sentences of deprivation of liberty, including day release, adjournment in serving sentences, release on parole, end of serving the sentence, with respect to foreigners and Polish nationals. A decision on a potential day release is issued by the court, which takes all relevant factual circumstances that may, though do not have to, make it refuse to grant it, into consideration.</p> <p>(d) There are no provisions that differentiate the legal position of foreigners from that of Polish nationals with respect to the application of parole or remission of sentence. There are no provisions that condition the application of parole with respect to a foreigner on his/her statement of will to leave the country after he/she have served the sentence.</p> <p>(e) There are no special provisions in criminal proceedings with regard to expulsion from the territory of the Republic of Poland of a foreign national convicted in the Republic of Poland, after he has served the penalty of deprivation of liberty. The proceeding with this respect is carried on as a separate administrative proceeding. The</p>

	premises for an expulsion of a foreign national are provided for in the Law on foreign nationals.
<b>Portugal</b>	<p>(a) Yes, specific bilateral agreements on the transfer of convicted persons have been agreed with the Government of Macau, the Kingdom of Thailand and the Kingdom of Morocco. There are general agreements covering judicial cooperation and serving of foreign sentence with the People's Republic of Angola, the Republic of Cape Verde, the Republic of Guinea Bissau, the Republic of S. Tome and Principe and the People's Republic of Mozambique.</p> <p>The Portuguese law on international cooperation in criminal matters (Act No 14144/99, of 31 August), also provides the possibility of transfer of convicted persons, on a reciprocal basis.</p> <p>(b) The justice ministry statistics for 31 December 2000 are 329 foreign citizens from countries in Europe, with the following distribution (Germany – 17; Spain – 92; France – 37; United Kingdom – 11; Netherlands – 18; Italy – 24; Romania – 16; others – 114). The total number of prisoners, on 31 December 2000, is 12 771. Source: Statistics of the Ministry of Justice 2000</p> <p>(c) The criminal code and the law relating to prison services do not distinguish between nationals and non-nationals.</p> <p>(d) Yes. Deportation is an additional punishment that can be applied to a foreign citizen, not resident in the country, convicted of a fraudulent crime with a sentence higher than 6 months of actual prison or a fine as an alternative to a sentence of longer than 6 months. The same sentence can be imposed on a foreign citizen resident in the country convicted of a fraudulent crime with a sentence longer than one year in prison. The following however must be taken into account: the gravity of the facts committed by the defendant, his personality, possible re-offending, the degree of ties with social life, special prevention and the time of residence in Portugal. If the additional sentence of deportation is ordered, it would be executed once the defendant has served two thirds of the prison sentence, or has completed half the sentence, following a decision by the judge on the serving of sentences. Certain conditions have to be fulfilled for granting of exit from the country for an extended, indefinite period, or bail instead of these measures (article 101 of Act 4/2001, of 10 January).</p> <p>(e) See previous reply.</p>
<b>Slovak Republic</b>	--
<b>Spain</b>	<p>(a) If the defendant is from abroad and is found guilty, there are numerous agreements (twenty-five in all) for serving the sentence in the country of origin.</p> <p>The list of bilateral and multilateral agreements signed by Spain to date is attached.</p> <p>(b) The number of EU citizens currently serving sentences in Spain is 1 287 (1 180 men and 107 women), representing 3.9% of the total prison population in Spain (31 686). The distribution by nationality is shown in the attached list.</p> <p>(c) - (d) The rules on open prison and parole apply to nationals and non-nationals in the same way. There is the possibility, with the consent of the person concerned, whether he is a non-national not resident in Spain or a Spaniard, resident abroad, that the period of parole can be served in the country he designates (Art. 197.1 of the Prison Regulations 190/1996).</p> <p>(e) Regarding the possibility of expelling non-nationals, the Laws on the rights and freedoms of non-nationals in Spain and on protecting the security of the citizen, cover the possibility of expulsion when a sentence</p>

	for a fraudulent crime is concerned, involving a penalty exceeding one year in prison.
<b>Sweden</b>	<p>(a) Sweden has entered into bilateral agreements with Thailand and Cuba enabling transfer of sentenced persons to these countries. At the present no other bilateral agreements have been made.</p> <p>(b) At present 327 nationals of other Member States than Sweden are serving sentences in Swedish prisons. This is approximately seven percent of the total prison population.</p> <p>(c) Nationals of other Member States are entitled to furloughs on the same terms as nationals. However, a person who according to the sentence is going to be expelled can normally not be granted regular furloughs, neither special furloughs during the last six months of the sentence.</p> <p>(d) The same rules about parole applies to nationals of other Member States as well as nationals. A person serving imprisonment of a fixed term shall be conditionally released after serving two-thirds of his or her sentence. The right to parole is unconditional in that sense that there are no conditions stated to be granted parole.</p> <p>(e) The Aliens Act (1989:529) contains provisions enabling the expulsion of non-nationals on account of criminal offences at the end of the sentences.</p>
<b>United Kingdom</b>	<p><u>England &amp; Wales:</u></p> <p>(a) The Repatriation of Prisoners Act 1984 Act enables prisoners to be repatriated where there is an international agreement providing for the repatriation of prisoners. The UK is currently a party to two multi-party agreements: the Council of Europe Convention on the Transfer of Sentenced Persons and the Commonwealth Scheme for the Transfer of Convicted Offenders. In addition, the UK has entered into bilateral agreements with five countries. We are currently negotiating agreements with 15 other countries</p> <p>Repatriation agreements exist with Albania, Andorra, Anguilla, Armenia, Austria, Azerbaijan, Bahamas, Belgium, British Indian Ocean Territory, British Virgin Islands, Bulgaria, Canada, Cayman Islands, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Falkland Islands, Finland, France, Georgia, Germany, Gibraltar, Greece, Grenada, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malawi, Malta, Netherlands, Nigeria, Norway, Panama, Pitcairn Islands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, St Vincent, St Helena &amp; Dependencies, Sweden, Switzerland, Tonga, Trinidad and Tobago, Turkey, The former Yugoslav Republic of Macedonia, Ukraine, United States of America, Zimbabwe.</p> <p>It is the policy of the United Kingdom normally to approve all request that meet the criteria set out in the relevant international agreement. However, it is the UK's firm policy not to approve a prisoner's request if, as a consequence, he or she would be likely to receive a substantial reduction in time to serve.</p> <p>(b) The latest recorded figures available for England and Wales are for the end of February 2002. During this period the prison population was just over 69,900 (see table in annexes).</p> <p>(c) Foreign national prisoners are eligible for all types of Release on Temporary Licence (ROTL) under the same restrictions and guidelines as UK nationals. All prisoners (including foreign nationals) are eligible to apply for temporary release unless they fall into one of the groups who are excluded from the scheme. The excluded categories of prisoners are: High Security Prisoners</p>

	<p>Unconvicted and unsentenced prisoners  Prisoners subject to extradition proceedings  Sentenced prisoners remanded on further charges  Foreign nationals are not denied ROTL on the grounds of their citizenship and are eligible subject to the same exclusions as UK prisoners. ROTL is risk assessment based, and there are valid and qualified reasons for presuming risk in some foreign national cases. However where that risk is not present, foreign nationals should be granted ROTL in keeping with the policy.</p> <p>(d) Foreign nationals are eligible for early release from prison under the same arrangements as UK nationals. Early release is not conditional on leaving the country although some prisoners may be subject to deportation on release. Those without a release address in the UK will not be supervised on release and will not be eligible for release on the Home Detention Curfew Scheme (an electronically monitored curfew). Prisoners serving a sentence of more than four years and recommended for deportation will have their application for discretionary release decided by the Secretary of State rather than the Parole Board (see e below).</p> <p>(e) Under section 3(6) of the Immigration Act 1971, where a foreign national aged 17 or more is convicted of an offence which is punishable with imprisonment, the court may make a recommendation for deportation to the Secretary of State for the Home Department. Such a recommendation forms part of the sentence, and may be appealed to a higher court.</p> <p>Separately, the Secretary of State has the power to deport a foreign national if he concludes that the deportation of the person concerned would be “conducive to the public good” [of the United Kingdom]. Where the Secretary of State decides to make a deportation order for this reason, there is a right of appeal against his decision to the independent Immigration Appeals Authority.</p> <p>Where a deportation order has been made against an individual, the order provides the legal basis for their removal from the United Kingdom. In addition, a prisoner who is a foreign national and who is in the United Kingdom without permission would be liable to removal under immigration powers in the same way as anyone else present without permission would be.</p> <p><u>Scotland:</u></p> <p>(a) There is no legal entitlement to repatriation. However, it is possible, under certain circumstances, for persons who have received a custodial sentence in a foreign country to be repatriated to their home country providing that the prisoner’s home country is a signatory to the Council of Europe Convention on the Transfer of Sentenced Persons, or the UK has a separate bilateral agreement based on the Convention with that country. The UK has a repatriation agreement with following countries: Under the Council of Europe Convention on the Transfer of Sentenced Persons:</p> <p>Albania, Andorra, Armenia, Austria, Azerbaijan, Bahamas, Belgium, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Netherlands, Norway, Panama, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tonga, Trinidad &amp; Tobago, Turkey, Ukraine and the United States of America.</p>
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	<p>British dependant territories to which the Convention has been extended: Anguilla, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Pitcairn Islands and St. Helena &amp; Dependencies.</p> <p>Bilateral Agreements</p> <p>Brazil, Egypt, Hong Kong and Thailand.</p> <p>(b) At 1 September 2000, there were 37 nationals of other Member States serving sentences in Scottish prisons. This was less than one percent (0.6%) of the total prison population.</p> <p>(c) Yes. All prisoners in custody in Scotland, including foreign nationals, are treated in accordance with the Prisons and Young Offenders Institutions (Scotland) Rules 1994</p> <p>(d) The law governing the early release of prisoners applies in the same manner to prisoners who are nationals and non-nationals, except where a long-term prisoner (i.e. one sentenced to 4 years or more) is liable to deportation, in which case the Scottish Ministers may release the prisoner early on licence without being recommended to do so by the Parole Board.</p> <p>(e) This is a matter for the UK Government.</p>
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Question 12	<p><b>12) Miscarriages of justice</b></p> <p><b>(a) Is there an independent body appointed to consider claims that there has been a miscarriage of justice?</b></p> <p><b>(b) If it transpires that there has been a miscarriage of justice, how is financial (or other) compensation for the wrongly accused/prosecuted person calculated and what does the person have to do in order to obtain such compensation?</b></p> <p><b>(c) Is legal aid available for proceedings intended to establish that there has been a miscarriage of justice?</b></p>
Austria	<p>(a) Other than the option of having convictions examined for their validity by a superior court via the usual route of appeal, Austrian criminal procedure does not recognise a body of this type, which presumably derives from Anglo-American practice. The Procurator Director may, however, by order of the authorities or on behalf of the Federal Ministry of Justice bring a <i>nullity suit in preservation of the Act</i> in the Supreme Court against convictions by criminal courts which are based on a violation or the incorrect application of the Act, or against a decision or precedent in a criminal court which is contrary to the Act which comes to his attention, even after the court's ruling has become legally effective (§ 33 paragraph 2 of the Code of Criminal Procedure). If the Supreme Court finds that the nullity suit in preservation of the Act is justified, it will acknowledge that the Act has been violated in the criminal case by the contested precedent or the contested ruling. However, if the accused has been sentenced by an invalid ruling in this way, the Supreme Court can then either acquit the defendant or impose a more lenient sentence, or order that the proceedings be re-opened (§ 292 of the Code of Criminal Procedure).</p> <p>Once the proceedings have been terminated, the <i>re-opening of proceedings</i> also presents the prosecutor and the defendant, given the presence of certain conditions (grounds for reopening proceedings) – e.g. in the event of a verdict of guilty the discovery of exonerating evidence –, with an opportunity to demand a court ruling on whether the ruling which terminates the proceedings will be cancelled and the proceedings be reopened (§§ 352 - 363 of the Code of Criminal Procedure). Judges who have been involved in previous criminal proceedings are precluded from making decisions on applications for the reopening of proceedings in this way.</p> <p>(b) 1. Under the terms of <i>Art. 5 paragraph 5 of the European Convention on Human Rights and Art. 7 of the Federal Constitution Act on the protection of personal freedom (PersFrG)</i>, anyone who has been arrested or detained in contravention of the Convention or the Act (i.e. if there has been violation of the material or formal law of custody), is entitled to full satisfaction including compensation for non-financial injury. In practice a sum of on average around € 75.00 a day is recognised for injustice suffered. The main factors in determining the level of this compensation are the duration and intensity of the inconvenience suffered; other determining factors are the psychophysical situation of the person concerned, the nature and the degree of fluctuation in his emotions and his sensitivity. The social status of the person concerned, on the other hand, is of no consequence.</p> <p>These rights exist independently of guilt, and will be asserted in accordance with the provisions of the Official Liability Act (AHG) with due consideration of the standard rules of procedure. This means that the injured party must first ask the Government Procurator of Finance in</p>

	<p>writing to state within three months whether or in what sum his claim for compensation will be acknowledged. For this administrative request procedure the injured party may be assigned a lawyer under the legal aid scheme in accordance with the provisions of the Code of Civil Procedure (ZPO) (§ 8 paragraph 1 of the Official Liability Act). A request which exceeds the sum recognised must be made via the civil courts.</p> <p>2. Under the terms of the <i>Criminal Law Compensation Act (StEG)</i> – see also response to Question 8d – only financial disadvantages which have arisen as the result of detention under criminal law, along with loss of earnings and defence costs, will be compensated in the event of unlawful (§ 2 paragraph 1(a) of the Criminal Law Compensation Act) or unjustified (§ 2 paragraph 1(b) of the Criminal Law Compensation Act) remand in custody or detention for extradition, provided the penalty is not taken into account, and in the event of an unjustified conviction or imprisonment (§ 2 paragraph 1(c) of the Criminal Law Compensation Act) according to the current legal situation.</p> <p>In this connection it must be remembered that only financial losses which are the result of the loss of freedom or the sentence will be compensated, i.e. stand in a causal relationship. Therefore only that part of the defence costs of the party concerned will be compensated which were incurred between his detention and his recovery of freedom or since his conviction and in connection with his efforts to have the proceedings reopened. Prospective financial disadvantages may be the subject of a request for a statement. No claim for compensation will be admissible in the event of the wilful arousal of the suspicion which formed the basis for detention or conviction.</p> <p>The assertion of claims under the terms of the Criminal Law Compensation Act begins with a ruling by the criminal court on whether the claim is justified. These declaratory judgement proceedings are followed by administrative demand proceedings on the basis of the Official Liability Act, in which the party concerned calls upon the Government in the person of the Financial Procurator in writing to pay compensation. The decision on the amount of compensation which will be acknowledged will be taken by the Federal Ministry of Justice. If the demand proceedings do not produce the result which the party concerned desires, civil law will be invoked to make a decision on the claim, which will be linked to the results of the declaratory judgement proceedings under criminal law.</p> <p>With reference to the relevant jurisdiction of the European Court for Human Rights in respect of Art. 6 paragraph 2 of the European Convention on Human Rights (see in particular <i>Rushiti v. Austria</i>)), which has already led to a change in the practical administration of justice by criminal courts in declaratory judgement proceedings in accordance with the Criminal Law Compensation Act, the Federal Ministry for Justice has prepared a bill which meets the requirements of the European Convention on Human Rights in full, and has already been noted with approval by the Council of Ministers, and forwarded for examination. According to the bill, the requirement for “refutation of suspicion” will in future lapse following an absolute discharge in accordance with the Convention. In future too civil courts alone will be responsible for examining the basis and the level of claims. Consideration will also be given to granting the party concerned the right to claim compensation for intangible damages in the case of detention which is contrary to the Act or the Convention.</p> <p>(c) If a defendant has been assigned a defence counsel on legal aid, the</p>
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	<p>assignment shall also be effective for potential proceedings on the basis of a nullity suit in preservation of the Act (§ 41 paragraph 5 of the Code of Criminal Procedure). In proceedings on the basis of an application for re-opening, a right to the assignment of a legally aided lawyer would have to be examined on the basis of the general requirements specified in the response to Question 1b. In proceedings of this kind, however, the presence of a difficult “legal situation” will be assumed and therefore – if social need is present – a defence counsel will be assigned on legal aid.</p> <p>Reforming actions:</p> <p>Finally reference should be made to the fact that the Ministry of Justice has drawn up a bill for the reform of the entire process of the preliminary criminal proceedings (Criminal Procedure Reform Bill), which will be sent to the Austrian Parliament in June 2002.</p>
<b>Belgium</b>	<p>a) Non. La notion d’erreur judiciaire est ambiguë. La personne peut s’adresser aux tribunaux civils sur base de l’article 1382 du Code civil si elle estime que l’Etat a commis une faute, engageant ainsi sa responsabilité.</p> <p>En dehors de ce cas, les articles 443 et suivants du Code d’instruction criminelle prévoient la possibilité de demander la révision des condamnations passées en force de chose jugée en matière criminelle et correctionnelle, dans des cas précis, dont la découverte d’un fait nouveau. Dans le cadre de cette procédure, c’est la Cour de Cassation qui est compétente. La procédure peut être initiée par le condamné ou par le ministre de la Justice. Dans ce cas, l’on ne peut à proprement parler d’erreur judiciaire dans la mesure où la justice a été rendue sur base des éléments connus à ce moment.</p> <p>b) En cas de faute, l’indemnité est fixée par le juge civil en fonction du dommage.</p> <p>L’article 447bis du même Code prévoit, quant à lui, la possibilité pour la personne ayant bénéficié d’une révision de sa condamnation, de solliciter de la part du gouvernement le paiement d’une indemnité fixée en équité. Un recours est possible auprès de la Commission relative à l’indemnité en cas de détention préventive inopérante, établie par la loi du 23 mars 1973 et composée de magistrats et d’avocats.</p> <p>c) Oui, dans les mêmes conditions que tout autre procès civil.</p> <p>En cas de requête en révision (art.443 du même Code), l’aide judiciaire peut être sollicitée dans les mêmes conditions qu’une autre procédure devant la Cour de Cassation.</p> <p>Pour information, le montant du minimum insaisissable s’élève depuis le 1er janvier 2002 à 849 EUR (arrêté royal du 27 novembre 2001 portant exécution de l’article 1409, §2, du Code judiciaire). Signalons, en outre, que le montant de 25.000 BEF visé à l’article 2, §1er, 1°, de l’arrêté du 10 juillet 2001 précité est indexé (article 2, §1er, alinéa 6, du même arrêté), pour l’année judiciaire 2001-2002 à 25.925 BEF.</p> <p>Est assimilé à un titre de séjour ou d’établissement, l’attestation d’immatriculation au sens de l’arrêté royal du 8 octobre 1981 portant exécution de la loi du 15 décembre 1980 sur l’accès au territoire, le séjour, l’établissement et l’éloignement des étrangers.</p>
<b>Cyprus</b>	<p>(a) There exists the Supreme Court of Cyprus, which in all cases of miscarriage of justice operates as a Court of Appeals. If the judgement of the Court of Appeals is not satisfactory to the defendant, he has the right to apply to the European Court of Justice, following the relevant procedure.</p> <p>(b) If it transpires that there has been a miscarriage of justice, the wrongly prosecuted person shall have the right to apply in writing to the General</p>

	<p>Director of the Ministry of Finance for a fair and reasonable compensation. (Article 3 of Law 144 (I) of 2001, concerning Appeals to Strike out Judicial Decisions that impose an Imprisonment Penalty.) For the estimation of such compensation, the opinion of the Attorney General is taken into consideration (article 4 (3) of Law 144(I) of 2001) along with the total period of time that the wrongly accused person was in prison, his family and financial condition, as well as his professional condition (article 5). Article 5 of the aforementioned Law provides for all the details concerning the estimation of the compensation of the wrongly accused person, who also has the right to claim damages through a civil action.</p> <p>(c) According to Article 30(3) (d) of the Constitution, every person has the right to have a lawyer of his own choice and to have free legal assistance, where the interests of justice so require. This provision is specified by the Law 165 (I) of 2002 concerning the provision of Legal Aid: article 5 provides for proceedings in civil cases and, thus, for civil claims, such as compensation.</p>
<b>Czech Republic</b>	<p>(a) No. The complaints concerning the miscarriage of justice can be submitted within the judicial system, even to the Ministry of Justice.</p> <p>(b) As it has been written above, there exists an Act on Liability of the State for Damages Caused in Consequence of Improper Official Procedure or Decision within the Execution of Public Authority in the Czech Republic. It is possible to claim the damages caused in consequence of unlawful decisions on custody, detention or imprisonment under specific circumstances further specified in this Act. Generally said, the compensation may be claimed if a decision on custody, imprisonment or detention was cancelled because of its illegality or it was changed and concerned person has already executed part or whole punishment of imprisonment or has spent some time in custody or detention institution. In addition, a person who was taken into custody may claim the compensation if a prosecution against him was discontinued, if he was acquitted or the case was assigned to another body.</p> <p>The request to obtain compensation should be in principle lodged with the Ministry of Justice (under specific circumstance with another central authority).</p> <p>The concerned act and the Civil Code provides for the manner of calculation of this kind of compensation.</p> <p>(c) There aren't any specific rules concerning the provision of legal aid in proceedings intended to establish that there has been a miscarriage of justice. We may refer to the general provisions concerning this matter.</p>
<b>Denmark</b>	<p>(a) If a person who has been convicted claims that there has been a miscarriage of justice, the normal possibilities of appeal are available. Furthermore, there are limited grounds upon which a case can be reopened, even though the time of appeal has been passed. A request to reopen a case is generally heard the special complaint court, which is a specially composed court with a supreme court judge, a high court judge, a city court judge, a practising lawyer and a representative from the academia.</p> <p>(b) There is a special expedited administrative procedure for claims of financial compensation arising from miscarriage of justice. Claims can be filed with the Regional Public Prosecutor with appeal to the Director of Public Prosecution and the Ministry of Justice. Besides claims based on general principles of tort law, compensation can be granted on grounds of equity. Compensation is granted for both economic loss and non-economic loss.</p>

	<p>If compensation is not granted, appeal can be made to the courts, where the case will be regulated by the normal rules of criminal procedure, including the right to appeal.</p> <p>(c) The abovementioned type of court case concerning compensation, will be regulated by the normal rules of criminal procedure. This includes the rules providing for legal council.</p>
<b>Estonia</b>	<p>(a) There is a disciplinary chamber to solve all cases of professional violations committed by judges:</p> <p>Courts Act art. 93. Disciplinary Chamber</p> <p>(1) For the adjudication of disciplinary matters of judges, the Supreme Court shall comprise the Disciplinary Chamber, which is comprised of five justices of the Supreme Court, five circuit court judges and five judges of courts of the first instance.</p> <p>(2) The Supreme Court <i>en banc</i> shall appoint, for the term of three years, the chairman of the Disciplinary Chamber and other members of the Disciplinary Chamber who are justices of the Supreme Court.</p> <p>(3) The internal rules of the Supreme Court shall prescribe the procedure for the substitution of members of the Disciplinary Chamber who are justices of the Supreme Court.</p> <p>(4) Pursuant to the internal rules, the Supreme Court shall involve judges of courts of the first instance and judges of courts of appeal elected on the basis of clause 38 (3) 4) of this Act in the adjudication of disciplinary matters.</p> <p>(5) For the adjudication of a disciplinary matter of a judge, the chairman of the Disciplinary Chamber shall form a five-member panel consisting of three members of the Disciplinary Chamber who are justices of the Supreme Court, one judge of a circuit court and one judge of a court of first instance.</p> <p>In addition, the Prison Department of The Ministry of Justice manages and supervises prison administration and operations. Prisoner claims are firstly reviewed by prison administration. Prisoners have the right of appeal to the minister of justice, legal chancellor and to court of law.</p> <p>(b) Criminal Procedure Code art. 45<sup>1</sup>. Obligation to compensate for damage caused to persons by unlawful acts</p> <p>(1) Upon termination of criminal proceedings due to the absence of a criminal act, or upon the absence of the necessary elements of a criminal offence in an act, or if the participation of a person in the commission of a criminal offence has not been proven, or upon making a judgment of acquittal, a preliminary investigator, prosecutor or court is required to explain to the person the procedure for restoration of his or her rights which have been violated, and to take the measures prescribed by law for the compensation of damage caused to the person by wrongful conviction, by wrongfully charging the person with a criminal offence, or by wrongfully taking the person into preventive custody.</p> <p>(2) Damage shall be compensated for pursuant to the procedure prescribed by law.</p> <p>To obtain the compensation for wrongful detention, one must in six months submit a written application to the Ministry of Finance.</p>

	<p>State Liability Act art 15 para 1: A person may claim compensation for damage caused in the course of judicial proceedings or extrajudicial hearing of a matter concerning an administrative offence, including damage caused by a court decision or a decision made in the matter of an administrative offence, only if a judge or the official who extrajudicially heard the matter of administrative offence committed a criminal offence in the course of these proceedings.</p> <p>(c) Pursuant to art 37 of Code of Criminal Procedure criminal defence counsel has the obligation to use all means and methods of defence in conformity with the law for the timely and full ascertainment of all facts which vindicate the person being defended or mitigate his or her liability, and <u>to provide other lawful legal assistance necessary in the criminal matter. This obligation incorporates <i>inter alia</i> the legal aid in proceedings intended to establish that there has been a miscarriage of justice.</u> Criminal defence counsel has the right (and the obligation if those means could mitigate the situation of the person being defended) to submit petitions for removal and applications and to file appeals.</p>
<b>Finland</b>	<p>(a) First of all the courts examine claims of miscarriage of justice. In addition to that Finland has parliamentary ombudsman and Chancellor of justice that consider claims brought to their attention by parties involved in various proceedings.</p> <p>(b) A person can take the matter either to court or to the State Treasury if he has been arrested/detained for more than 24 hours on the bases of wrong accusation/prosecution. Principally the compensation for suffering loss of freedom is 100€/day. In addition the applicant is granted legal fees, which often amount to more than the compensation if the matter is handled in a court by a lawyer. In cases of other than mentioned above, where person has been wrongly accused, the state pays for his legal fees.</p> <p>(c) Legal fees are covered by the compensation, see above.</p>
<b>France</b>	<p>Question traitée par le bureau de politiques pénales (pour la question particulière de l'indemnisation des détention provisoires injustifiées (voir point 8 d.)</p> <p><i>12. c. Sur l'octroi de l'aide judiciaire dans le cadre de procédures visant à établir qu'une erreur judiciaire a été commise.</i></p> <p>La personne qui engage une procédure de révision prévue par les articles 622 à 626 du code de procédure pénale peut bénéficier de l'aide juridictionnelle dans les mêmes conditions et suivant les mêmes modalités que pour les autres procédures. Un tarif spécifique est prévu pour l'assistance de l'avocat devant la commission ainsi que devant la cour de révision. Si la procédure est renvoyée devant une juridiction de fond pour être rejugée, l'avocat dont le client est admis à l'aide juridictionnelle reçoit la rétribution prévue par le tarif pour la procédure devant cette juridiction.</p> <p>L'aide juridictionnelle peut également être octroyée pour la procédure devant la commission de réexamen d'une décision pénale consécutif au prononcé d'un arrêt de la cour européenne des droits de l'homme prévue aux articles 626-1 à 626-7 du code de procédure pénale.</p>
<b>Germany</b>	<p>(a) Appeal procedures and reopening pursuant to Sections 359 StPO are available to amend judicial decisions. Amendment requires a decision to be taken by an independent court.</p> <p>(b) Compensation is based in turn on the Act on compensation for criminal prosecution measures [StrEG].</p> <p>Section 1 StrEG stipulates that compensation shall be paid from public funds to those who have suffered damage as a result of a conviction in a</p>

	<p>criminal court, if the conviction is overturned or mitigated in the reopened proceedings or in some other respect after it has become legally effective. The same applies if a measure of reform and prevention or an incidental consequence under criminal law has been ordered without a conviction.</p> <p>Please refer to Question 8) letter (d) for further details.</p> <p>(c) Pursuant to Section § 364b StPO, the following applies in this respect: The court competent to give decisions in the reopened proceedings shall, upon application, appoint defence counsel for the convicted person who does not have one, <u>also for the purpose of preparing the proceedings to be reopened</u>, if</p> <ol style="list-style-type: none"> <li>1. there are sufficient factual indications that certain investigations will result in facts or evidence which may substantiate the admissibility of an application to reopen the proceedings,</li> <li>2. due to the complexity of the factual or legal position the participation of defence counsel appears to be necessary and</li> <li>3. the convicted person is unable to engage defence counsel at his own expense without detriment to his and his family's necessary maintenance; special provisions of the ZPO on the granting of legal aid apply to the proceedings to establish these conditions.</li> </ol> <p>If defence counsel has already been appointed for the convicted person, the court shall, on request, issue a ruling to the effect that the conditions listed under 1 to 3 above are in place.</p>
<b>Greece</b>	<p>By virtue of article 99 of the Constitution, a court for applications of miscarriages of justice has been established. This special court hears cases that allege that the court or a judge of a court intentionally caused harm to the applicant by miscarrying justice. No application has been accepted by the court to this date. In all other cases, any injured party may seek a new trial by applying for one of the accepted methods of appeal against the decisions of the judicial council and the criminal courts.</p> <p>See 12a above.</p> <p>See answers to question 2 above.</p>
<b>Hungary</b>	<p>(a) Yes, the courts in a civil procedure</p> <p>(b) He or she has to submit a claim to the court.</p> <p>(c) This procedure is governed by the rules of the civil procedure. Legal representation is available ex officio only on the basis of the financial situation of the claimant.</p>
<b>Ireland</b>	<p>(a) This would be a matter of an application to Court of Criminal Appeal in accordance with the Criminal Procedure Act, 1993. The courts are independent in the discharge of their functions</p> <p>(b) Where a conviction has been quashed by the Court of Criminal Appeal or a person has been acquitted in a retrial and the court has certified that there has been a miscarriage of justice or where a person is pardoned by the President and the Minister for Justice, Equality and Law Reform is of the opinion there has been a miscarriage of justice, the Minister for Justice, Equality and Law Reform is obliged to pay compensation if the person concerned submits an application for such compensation. Any person dissatisfied with the amount of compensation so awarded can apply to the High Court to determine the amount to be paid and the award of the High Court is final. A person instead of making an application to the Minister can institute a civil action for damages arising from the conviction.</p> <p>(c) Where legal aid was granted for the trial it is also granted for any retrial intended to establish if there has been a miscarriage of justice.</p>



<p><b>Italy</b></p>	<p>(a) Article 643 CCP “Reparation for miscarriages of justice” states: “1. Persons acquitted on retrial, if they have not caused the miscarriage of justice through malicious intent or gross negligence, shall be entitled to compensation commensurate with any punishment that they have been given or imprisonment that they have served and the personal and family consequences resulting from the conviction.</p> <p>2. Such compensation shall take the form of payment of a sum of money or, in view of the circumstances of the beneficiary and the nature of the damage, of the establishment of a life annuity. The beneficiary, upon request, shall be accommodated in an institution, at the expense of the State.</p> <p>3. There shall be no entitlement to compensation in respect of that part of a prison sentence served while awaiting a decision on the punishment to be allotted for a different offence, in accordance with Article 657(2).”</p> <p>The Court of Appeal decides on the application.</p> <p>Article 644 CCP. “Compensation in the event of death” states: “1. If the convicted person dies, whether or not before retrial, the spouse, descendants and ascendants, brothers and sisters, relatives to the first degree and persons connected to the deceased person by adoptive ties shall be entitled to compensation.</p> <p>2. Such persons may not, however, be awarded compensation of an amount greater than that which would have been paid to the acquitted person. The sum shall be divided equitably on the basis of the consequences of the miscarriage suffered by each person.</p> <p>3. Persons unfit under the terms of Article 463 of the Civil Code shall not be entitled to compensation.”</p> <p>The Court of Appeal also decides on this application. Under the relative procedure, the above-mentioned application for compensation must be submitted, if it is to be valid, within two years of the retrial decision becoming final.</p> <p>The power to decide on action for compensation of damages against the State (Law 117 of 1988, as referred to in the reply to 8(d)), which must be brought against the President of the Council of Ministers, belongs to the court of the place of the seat of the Court of Appeal of the district closest to that comprising the court office to which the magistrate belonged at the time of the event, except when the magistrate has taken office in one of the offices of that district. In this case, jurisdiction lies with the court of the place of the seat of the Court of Appeal of the closest district other than that in which the magistrate held office at the time of the event.</p> <p>(b) Action for compensation may be initiated only when the ordinary legal channels or other remedies provided in respect of remand and summary measures have been tried, and in any case when it is no longer possible to modify or revoke the measure or, if there is no provision for such remedies, when the level of the proceedings in which the event causing the damage took place has been exhausted. The application must be submitted within two years of the time from which the action can be initiated, and is otherwise barred.</p> <p>The action may be initiated within three years of the date of the event causing the damage if, within this term, the level of the proceedings within which the event has taken place has not been concluded.</p> <p>In cases of denial of justice, the action must be brought within two years of the expiry of the term in which the magistrate should have ruled on the case.</p> <p>The term does not run, however, in respect of a party who, because of the secrecy of investigations, has been unaware of the event.</p>
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	(c) Free legal aid is available for those on low incomes – see the reply to question 2.
<b>Latvia</b>	--
<b>Lithuania</b>	<p>a) The acts of pre-trial investigation officers, public prosecutors and courts (judges) when receiving procedural documents in a criminal case concerning detention, custody (arrest), the application of coercive measures or conviction may be deemed illegal by decisions of pre-trial investigation officers, public prosecutors and courts. During the pre-trial investigation, participants in criminal proceedings are entitled to request that the activities and decisions of the investigation officer be examined by the public prosecutor. If the public prosecutor refuses to do so, an appeal against this decision may be lodged with the pre-trial investigation judge (Article 62 of the Code of Criminal Procedure). Participants in criminal proceedings are entitled to request that the activities and decisions of the public prosecutor carrying out the pre-trial investigation be examined by a more senior public prosecutor. If the latter refuses to do so, an appeal against this decision may be lodged with the pre-trial investigation judge (Article 63 of the Code of Criminal Procedure). Participants in criminal proceedings are entitled to lodge an appeal against the activities and decisions of the pre-trial judge with the president of the district court. (Article 65 of the Code of Criminal Procedure).</p> <p>Participants in criminal proceedings are also entitled to lodge an appeal against the judgment of a court which has not yet entered into force as a means of drawing attention to illegal acts on the part of pre-trial investigation institutions or the court committed in the course of criminal proceedings.</p> <p>Thus, questions relating to errors by the court, i.e. illegal acts by pre-trial investigation officers, public prosecutors and courts, are dealt with in accordance with the normal procedure, and no specific institutions have been set up to be competent for examining such questions.</p> <p>An appeal against the illegal acts of institutions, bodies, offices or officers who have a statutory public administrative right and in practice exercise executive power or special executive functions may be lodged in accordance with the administrative procedure.</p> <p>b) Compensation may be granted for damage caused as a result of illegal acts by pre-trial investigation officers, public prosecutors, and the court by judicial or non-judicial means.</p> <p>The non-judicial procedure of damage compensation is regulated by the Law of the Republic of Lithuania on the compensation of damage caused as a result of the illegal acts of executive institutions. Under Article 3(3) and (4) of this Law, a person may submit a request to the Ministry of Justice for compensation under the non-judicial procedure indicating his personal data (name and surname, personal code, place of residence), the amount of compensation requested and the circumstances justifying this amount, and enclosing documents attesting to the fact that no court decision has been taken on compensation for the damage caused as a result of the acts in question and that no settlement has been reached. Also enclosed should be the decisions of the pre-trial investigation officer, public prosecutor or court, and an indication of the violations committed by the pre-trial investigation officer, public prosecutor or court in the criminal case and documents confirming the extent of the damage. Article 4(1) of the said Law states that compensation for real material damage awarded in accordance with the non-judicial procedure is calculated in accordance with the rules of the Law but may not exceed</p>

	<p>LTL 10 000, and compensation for immaterial damage is calculated in accordance with the rules of the Law but may not exceed LTL 5 000. The judicial procedure for calculating the amount of compensation is regulated by the Criminal Code of the Republic of Lithuania. Damage resulting either from unlawful conviction, or unlawful arrest, as a measure of suppression, as well as from unlawful detention, or application of unlawful procedural measures of enforcement is compensated fully by judicial procedure irrespective of the fault of the officials of preliminary investigation, prosecution or court (Article 6.272 of the Criminal Code). Immaterial damage may also be compensated by judicial procedure. Cases relating to the compensation of damage are dealt with in accordance with the rules of the Criminal Code of the Republic of Lithuania.</p> <p>c) The right to obtain secondary legal aid is granted in all criminal, civil and administrative cases to citizens of the Republic of Lithuania and other Member States of the European Union and to natural persons legally resident in the Republic of Lithuania and other Member States of the European Union whose assets and annual income do not exceed the level of assets and annual income established by the Government of the Republic of Lithuania for the purposes of receiving legal aid. This right is also granted to the persons referred to in Article 12 of the Law of the Republic of Lithuania on State—guaranteed legal aid irrespective of the level of assets and annual income established by the Government of the Republic of Lithuania for the purposes of receiving legal aid.</p> <p>Thus, all of the persons referred to above may receive secondary legal aid in criminal cases relating to detention, arrest, the application of procedural measures of enforcement and the illegality of a conviction and in civil cases relating to compensation for damage caused as a result of the illegal acts by pre-trial investigation officers, public prosecutors and courts.</p>
<b>Luxembourg</b>	<p>a) Non.</p> <p>b) La loi du 30 avril 1981 concernant la révision des procès et les indemnités à accorder aux victimes d'erreurs judiciaires a profondément remanié les articles 443 à 447 du code d'instruction criminelle en élargissant les possibilités d'ouverture à révision et en instituant un droit à réparation aux victimes d'erreurs judiciaires. La décision d'où résulte l'innocence totale ou partielle d'un condamné, peut, sur la demande de celui-ci, lui allouer des dommages-intérêts à raison du préjudice que lui a causé la condamnation.</p> <p>Par ailleurs, la loi du 1er septembre 1988 sur la responsabilité civile de l'Etat crée dans son article 1er une véritable responsabilité de l'Etat du fait de son activité juridictionnelle. Hormis le cas de l'autorité de la chose jugée, toutes les décisions émanant des juridictions sont susceptibles d'engager la responsabilité de l'Etat. En outre, aucune condition spéciale concernant la gravité de la faute à la base du fonctionnement défectueux du service judiciaire n'a été posée. Ainsi, la notion de faute anonyme de service constitue la base de l'action en responsabilité contre l'Etat, de sorte que la personne poursuivie à tort aura plus de facilité à obtenir réparation par le biais de cette loi que si elle engageait une procédure de droit commun basée sur la faute.</p> <p>c) Renvoi aux développements faits sous 2) quant au champ d'application de l'assistance judiciaire.</p>
<b>Malta</b>	<p>(a) Ministry of Justice through Attorney General</p> <p>(b) --</p> <p>(c) --</p>

<b>The Netherlands</b>	<p>For miscarriages of justice there are the regular legal remedies of appeal to a higher court and appeal to the court of cassation. In exceptional cases of miscarriages of justice after the sentence is irrevocable, revision of the sentence is possible (article 457). Revision is possible in case two sentences are inconsistent and in case there is a circumstance that the court did not know during the court session and there is a good chance that if the court had known, it would have made a different decision. If a person is wrongly prosecuted/accused he can get financial compensation. To obtain compensation a person has to make an appeal within three months after the conviction. The court will decide in fairness how much will be compensated. The following can be compensated: the damage because of the time spent in custody (article 89), the damage because of the time necessary to attend the trial and the cost of the legal counsel and travelling expenses (article 591a). After a revision procedure the wrongly accused person can get financial compensation for the time spent in prison (article 481). Legal aid is available for proceedings intended to establish that there has been a miscarriage of justice (article 42, 43 en 458).</p>
<b>Poland</b>	<p>(a) There is no independent body operating outside the justice system, which would examine cases concerning miscarriages of justice. Such claims are considered by a court. There are four possibilities to recover violated rights. The first one consists in the application of ordinary means of appeal used for judgements that have not become final (appeal against a judgement, appeal against an order), the second – in the application of extraordinary means of appeal: cassation, re-opening of the proceeding used for final judgements. The third possibility involves instituting the proceedings to declare a judgement invalid and the fourth one – claiming redress for an unjust conviction, preliminary detention or detention. With respect to the fourth possibility, Article 552 of the Polish Code of Criminal Procedure is applicable, pursuant to which an accused is entitled to redress from the State Treasury for the damage incurred by him and to a compensation for injury for the damage suffered, in a situation when:</p> <ul style="list-style-type: none"> <li>- in consequence of re-opening of the proceedings, cassation or declaring the judgement invalid he/she has been acquitted or sentenced to a more lenient penalty,</li> <li>- after reversing the sentencing judgement or declaring it invalid, the proceeding has been discontinued on account of circumstances which had not been considered in a prior proceeding,</li> <li>- a protective measure has been applied under the above-mentioned conditions,</li> <li>- there has been an manifestly unjust preliminary detention or arrest.</li> </ul> <p>(b) Pursuant to the principles elaborated in the jurisprudence of the Supreme Court, redress involves a repair of the damage as understood by the civil law (i.e. incurred losses and lost advantages, as well as a compensation of an injury being a result of an unjust conviction or deprivation of liberty). Since the responsibility of the State in this case is based on the risk principle, it is not necessary to prove the guilt of a concrete official. It is just enough to establish the very fact on the basis of which redress is claimed. Redress for an accused aims at repairing the damage and the injury caused. While establishing the amount of the compensation, the following</p>

	<p>should be taken into account:</p> <ul style="list-style-type: none"> <li>- the duration of punishment or preliminary detention</li> <li>- the consequences of adjudicated penalty or preliminary detention on the eligible person (e.g. those resulting from the dissemination of this information in his social circles)</li> <li>- the conditions of serving the sentence</li> <li>- the impact of financial penalty on his life situation of that time</li> <li>- the fact of losing his good reputation, etc.</li> </ul> <p>While establishing the amount of redress, the following should be taken into account:</p> <ul style="list-style-type: none"> <li>- any costs borne by the eligible person, including those related to the treatment of disturbances to health,</li> <li>- costs related to obtaining means to cover unjust financial penalties</li> <li>- lost income, reduced income after the recovery of liberty, to take into account the possibilities that he/she had earlier.</li> </ul> <p>The position of the court with regard to redress, compensation should be comprehensively reasoned, and hence it should make the control by the court of the second instance. Pursuant to Article 554 of the Polish Code of Criminal Procedure, a claim for redress shall be lodged in the Regional Court, within the jurisdiction of which the judgement was issued in the first instance, and in the event of an unjust preliminary detention or arrest – in the Regional Court competent with respect of a place in which the person under the preliminary detention or detained person was released.</p> <p>(c) Legal aid in this kind of proceedings is available under general principles.</p>
<b>Portugal</b>	<p>(a) There is no specific independent body to examine cases of miscarriage of justice. The Portuguese system is based on the system of judicial appeal.</p> <p>(b) Article 22 of the Constitution of the Portuguese Republic establishes the responsibility of public bodies, stipulating that the State and other public bodies are civilly responsible, together with the owners, employees and agents of the organisations, for actions or omissions practiced in the exercise of their functions, and ensuing from this exercise, with resulting violation of rights, liberties, and guarantees or damage to another. The calculation of compensation is undertaken under the general terms of non-contractual liability.</p> <p>It must be mentioned that an Act covering the State's civil non-contractual liability is being drafted. It already particularly provides for responsibility for acts in the judicial function, referring expressly to the sphere of miscarriage of justice.</p> <p>(c) Yes.</p>
<b>Slovak Republic</b>	<p>Chapter 17 of The Code of Criminal Procedure regulates a proceeding related to the Complaint against law violation by granting the possibility of filing the Complaint on a Supreme Court against the valid decision of the Court which violates the law as well as against a valid decision of the court made on erroneous procedure to the Prosecutor General or to the Minister of Justice. The Prosecutor General may do it also against such decision of a prosecutor, investigator or a police body. Based on the complaint against the law violation the Supreme Court shall review the correctness of all statements of the challenged decision as well as of the procedure preceding it. If the Supreme Court finds a law violation it shall</p>

	<p>pronounced in a judgment that the challenged decision or its part or a procedure violated that law.</p> <p>Section 278 regulates the conditions for Retrial of Proceedings, which ended in a final judgment – it shall be permitted if facts of evidence unknown to the court before , emerge and this would justify another decision on a guilt .The Retrial shall be also permitted if the final decision finds that the police authority , investigator, prosecutor or a judge in the original procedure breached their duties by acting in a way that constitutes a criminal offence. The competent authority or a body for a Retrial procedure is the court that would be competent to rule on the indictment or the court which ruled in the case in the first instance or in a specific case the District court.</p> <p>The compensation is ruled by the Law No. 58/1969 Coll. on liability for a damages caused by a state decision or by its incorrect procedure (first stage is to initiate a deal with a Ministry of Justice and in a case of dissent to initiate a civil procedure on a compensation). The legal aid is based on general principles.</p>
<b>Spain</b>	<p>(a) When there is the possibility that a miscarriage of justice has occurred, an appeal for review can be lodged before the Supreme Court (Arts. 954-961).</p> <p>(b) In case of a dismissal, release or acquittal, the liability arrangements are laid down in Arts. 292 to 297 of the Framework Law on the Judiciary. Art. 294 provides for a right of compensation for those who are acquitted after suffering preventive imprisonment, where the act for which they are charged never took place or if a dismissal of the case is ordered for the same reason, so long as this has caused him damage. The amount of compensation will be set as a function of the period of loss of liberty and the resultant family and personal consequences.</p> <p>(c) Yes, in the same way as for the rest of the proceedings.</p>
<b>Sweden</b>	<p>(a) If the miscarriage of justice entails grave procedural errors preceding a judgment, the judgment can be set aside by a court of appeal or the Supreme Court and remanded for a reconsideration of the case. If there has been a miscarriage of justice the person subjected to such miscarriage can sue the State for compensation. An aggrieved person can be economically compensated in accordance with general principles of Tort law.</p> <p>Furthermore, there are two independent bodies which can consider allegations that there has been a miscarriage of justice; the Parliamentary Ombudsman and the Chancellor of Justice.</p> <p><i>The Parliamentary Ombudsman (JO)</i> is an office with general control authority. The duty of the Ombudsmen is to supervise, <i>inter alia</i>, the court administration and its employees in order to ensure that they observe and enforce the laws (especially those who safeguard the freedom, security and property of its citizens) and to take actions if this is not the case. The supervision of the Ombudsmen now in question can be concluded either in written admonitions or other criticism and in prosecutions or disciplinary proceedings.</p> <p><i>The Chancellor of Justice (JK)</i> follows the same procedure as the Ombudsmen in its supervision of the courts and administrative organs. The Chancellor's office exercise, <i>inter alia</i>, supervision on behalf of the State over all governmental and municipal authorities and their employees. The Chancellor's office can prosecute officials for breach of duty and can express opinions in legal and other questions, even without requests. The Chancellor also tries individual claims for compensation as a result of wrongful deprivation of freedom.</p>

	<p>(b) A person who has been arrested more than 24 hours or detained can apply for compensation at the Chancellor's office when the preliminary investigation has been concluded without any charges or when a judgment of acquittal has been pronounced. Such a person can be compensated for psychological infringement or distress (500 – 1 000 SEK a day), loss of income, infringement of business activity and expenditure. When the application has been lodged, the Chancellor's office let the prosecutor give his opinion on the application after which the applicant is given the opportunity to give his view on the prosecutor's opinion. The Chancellor's office thereafter decides the case. This decision can not be appealed.</p> <p>(c) With regard to the proceedings taking place at the Chancellor's office and the Parliamentary Ombudsmen, the individual seeking compensation is normally considered not to be in need of legal aid in order to establish such a miscarriage. This follows from the procedures of the authorities and their responsibility to investigate potential miscarriages of justice. On the other hand legal aid can be granted if the proceedings take place within the regular court organisation.</p>
<b>United Kingdom</b>	<p><u>England &amp; Wales:</u></p> <p>(a) Yes. The independent Criminal Cases Review Commission (CCRC) has powers to review and, if necessary, investigate possible miscarriages of justice where the ordinary court appeal process has been exhausted, and to refer suspected miscarriages of justice back to the Court of Appeal.</p> <p>(b) Applications must be made to the Secretary of State and an independent assessor determines the amount of the award, applying principles analogous to those used for damages arising from civil liabilities.</p> <p>(c) Legal advice and assistance is available for cases that are being considered by the Criminal Cases Review Commission. Applicants are eligible for advice and assistance if their financial means fall within the disposable limits. Advice and assistance may only be provided on legal issues concerning English law and where there is sufficient benefit to the individual. If the CCRC refers the matter to the Court of Appeal, an application for a representation order can be made to the court to cover the proceedings to be heard.</p> <p><u>Scotland:</u></p> <p>(a) Yes - the Scottish Criminal Cases Review Commission, Portland House, 17 Renfield Street, Glasgow G2 5AH. This public body was established in April 1999. If the Commission believes after proper investigation that a miscarriage of justice may have occurred, and that it is in the interests of justice that a reference should be made, it may refer the case to the High Court.</p> <p>(b) Ministers may authorise compensation in recognition of hardship caused as a result of a wrongful conviction, a wrongful charge or a wrongful sentence or order. There may in the first of these be a statutory requirement to pay compensation (section 133 of the Criminal Justice Act 1988 as amended). Where this section does not apply, and in the other categories of cases, compensation may be provided by way of an ex-gratia payment.</p> <p>The claimant must submit an application for compensation in writing to the Scottish Ministers. The assessment of compensation is undertaken by an <u>independent assessor</u>, appointed by the Scottish Ministers, who is experienced in the assessment of damages. The independent assessment is made on the basis of written submissions setting out the relevant facts. The assessment will take account of both pecuniary and non-pecuniary</p>

	<p>loss arising from the wrongful charge or conviction and/or loss of liberty. When making his or her assessment, the assessor will take into account any expenses, legal or otherwise, incurred by the claimant in reversing his conviction, or pursuing the claim for compensation.</p> <p>(c) Legal advice is available under the legal aid scheme for a convicted person to consult a solicitor in such matters. The same rules on eligibility apply as above (see (a)). Criminal legal aid is also available for proceedings before the Scottish Criminal Cases Review Commission and any subsequent appeals to the Courts.</p>
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**Presumption of innocence**

<b>Question 13</b>	<b>13) Presumption of innocence</b> <b>How is the notion of "presumption of innocence" guaranteed/protected in both legal and practical terms ?</b>
<b>Cyprus</b>	According to Article 12(4) of the Constitution "every person charged with an offence shall be presumed innocent until proved guilty according to the law." The presumption of innocence, emanating from the protection of human rights, it is well spread throughout the whole criminal legal structure of Cyprus and in practice the criminal courts always take it into great consideration before they convict the accused. On this notion the whole criminal proceedings is based and it consists the cornerstone of another notion-which in fact is the other side of the same coin- which affects directly the burden of proof in criminal cases: in order for the Judge to convict the accused person, it must be proved beyond any reasonable doubt that the accused has committed the offence that he is accused of.
<b>Czech Republic</b>	The principle of presumption of innocence is provided for in the Charter of Fundamental Rights and Freedoms, in its article 40. Furthermore, it is provided for in the Criminal Proceedings Code as well. This principle is enlisted in the basic principles of criminal proceedings enumerated in section 2 of the Criminal Proceedings Code. This provision provides for that a person is regarded as innocent until his guilt is confirmed by the legitimate condemnation judgement.
<b>Estonia</b>	<p>First of all the principle of presumption of innocence is stipulated in the <b>Constitution</b> (art. 22):</p> <p>No one shall be presumed guilty of a criminal offence until a conviction by a court against him or her enters into force.</p> <p>No one has the duty to prove his or her innocence in a criminal procedure.</p> <p>No one shall be compelled to testify against himself or herself, or against those closest to him or her.</p> <p>In the <b>Code of Criminal Procedure</b> there are several articles, which touch upon this principle.</p> <p>Article 12 para 2: A person may be convicted for the commission of a criminal offence and punished pursuant to criminal procedure solely by a court judgment and in accordance with the law.</p> <p>Article 19 (1) The court, prosecutors and preliminary investigators are required to take all measures prescribed by law for comprehensive, thorough and objective investigation of the facts of a criminal matter, and to ascertain the facts which convict or vindicate a suspect, accused or accused at trial and the mitigating or aggravating circumstances.</p> <p>Article 19 (2) The court, prosecutors and preliminary investigators have no right to lay the burden of proof on a suspect, accused or accused at trial.</p> <p>Article 19 (3) It is prohibited to attempt to obtain testimony from a suspect, accused, accused at trial or other persons participating in a criminal matter by violence, threats or other illegal means.</p> <p>Article 268 para 2: A judgment of conviction shall not be based on presumptions and shall be made only on the condition that the guilt of the accused at trial in the commission of a criminal offence has been proved in the course of court hearing.</p>

<b>Hungary</b>	<p>According to the Constitution and to the fundamental principles of the Criminal Procedure Act, the suspect has the right to be regarded not guilty until proved guilty by a court. This means that legal consequences attached to the commitment of a crime exist only after the conviction by a court. It is also a guidance for handling evidence: the burden of proof lies, without exception, on the investigating authority.</p> <p>This principle has been subject to very intensive constitutional control by the Hungarian Constitutional Court.</p>
<b>Latvia</b>	<p>In accordance with p.19.1 of Latvian CPC nobody can be acknowledged guilty in committing of a criminal act and judged, until his guilty has not been proved in order provided for by the law and acknowledged by judgement come into force.</p> <p>The obligation to prove belongs to prosecutor. The accused of a crime (offendant) has not to prove his innocence.</p> <p>The proven evidence, which confirms the offender has been committed a criminal act, must be in the ground of the conviction sentence.</p> <p>All doubts on guilt, which were not possible to prevent, are estimated in favour of the accused (offendant). Equally are estimated the doubts, which arise in translating and adjusting of the Criminal Law and Criminal Procedural Law.</p>
<b>Malta</b>	Full
<b>Slovak Republic</b>	Section 2 paragraph 2 of the Code of criminal procedure: Any person charged with an offence shall be presumed innocent until proven guilty by a final sentencing judgment of a court.

#### Preventive detention

<b>Question 14</b>	<p><b>14) Preventive detention</b></p> <p><b>On what legal grounds can a person be taken in pre-trial detention ?</b></p> <p><b>a) Are there any special conditions/reasons for pre-trial detention (e.g. risk of failing to attend trial (absconding); of interfering with evidence or witnesses, or otherwise obstructing the course of justice; of committing an offence on bail; of harm against which he or she would be inadequately protected or to be a disturbance to public order)?</b></p> <p><b>b) Decision on the detention</b></p> <p><b>i) If your legal system provides that there may be a preliminary decision on detention, which legal authority is empowered to take such a decision (prosecutor/other legal authority/police)?</b></p> <p><b>ii) Is there an obligation for the prosecutor/other authority to present the case for a court? If so, which is the time limit? Which is the time limit for the court to decide on the detention?</b></p> <p><b>iii) Are there any remedies against the decision of the court (in 1st, 2nd and 3rd instance)? If so, which? Is there an obligation and if so, which, to review the decision on detention after a certain time limit?</b></p> <p><b>iv) Pursuant to Article 5(3) ECHR a detained person is entitled to trial within a “reasonable time”. Is it possible, under your legal system, to translate this concept into a specific time period (is it, i.e., related to the gravity or nature of the offence)?</b></p>
<b>Cyprus</b>	<p>According to Article 11(2)(c) of the Constitution, no person shall be deprived of his liberty, unless ‘‘the arrest or detention of a person is for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing or fleeing having done so.’’</p>

<p><b>Czech Republic</b></p>	<p>a) This issue (we understand that Your question aims at custody) is provided for by the section 67 and following provisions of the Criminal Proceedings Code.</p> <p>The defendant may be taken into custody (detained) only if his/her behaviour or other particular circumstances suggest a reasonable fear that</p> <p>a) he/she will flee or will hide so that to avoid the criminal prosecution or punishment, especially, if his/her identity cannot be immediately ascertained, if he/she has not permanent residence, or if he/she possibly faces a severe punishment;</p> <p>b) he/she will affect the witnesses not interrogated as yet or co-defendants or otherwise frustrate clarification of the circumstances significant for the criminal prosecution, or</p> <p>c) he/she will repeat the criminal activity for which the defendant is prosecuted, will complete the criminal offence which he/she had prepared, or with which he/she had threatened;</p> <p>and the facts found so far indicate that the offence because of which the criminal prosecution is initiated has been committed, is distinguished for the features of a criminal offence, there are obvious grounds to suspect that the criminal offence has been committed by the defendant, and the purpose of detention cannot be achieved with regards to the person of the defendant, nature and gravity of the criminal offence by taking up any other measure.</p> <p>A defendant who is prosecuted for the intentionally committed criminal offence with the punishment of imprisonment the upper limit of which does not exceed two years, or the criminal offence committed by negligence, with the punishment of imprisonment the upper limit of which does not exceed three years, may not be taken into custody. However, these restrictions do not apply if the defendant:</p> <p>a) has fled or has been in hiding;</p> <p>b) repeatedly did not arrive after being summoned, and could not have been brought, or his/her attendance of the criminal proceedings could not have been arranged otherwise;</p> <p>c) has an unknown identity which could not have been ascertained by available means;</p> <p>d) has already influenced witnesses or co-defendants or otherwise frustrated clarification of the circumstances significant for the criminal prosecution;</p> <p>e) continues in the criminal activity for which he/she was prosecuted.</p> <p><b>b) Decision on the detention</b></p> <p>i) The decision on taking into custody is taken by the court; in the pre-trial stage the court takes the decision on the suggestion of the prosecutor. Concerning the release from the custody on bail during the pre-trial stage, such decision is taken by the prosecutor.</p> <p>ii) If the state attorney has been turned over a apprehended person and if he/she has not released such person, he/she will turned this person to the court within 48 hours after apprehension, at the latest, together with a proposal for punishment. He/she will otherwise decide on initiation of the criminal prosecution, and submit the court a proposal for the decision on the defendant's custody. The judge to whom the apprehended person has been turned over is obliged to interrogate him/her and decide whether he/she should be released or taken into custody 24 hours after the delivery of the prosecutor's suggestion to impose the custody at latest.</p> <p>The overall time of detention in the criminal proceedings may not exceed:</p> <p>a) one year if the criminal prosecution is conducted with regards to the criminal offence where the magistrate has the jurisdiction in the</p>
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	<p>proceedings;</p> <p>b) two years if the criminal prosecution is conducted with regards to the criminal offence where the panel of a district or a regional court in the first instance has the jurisdiction in the proceedings, unless the criminal offence is referred to under letters c) and d);</p> <p>c) three years if the criminal prosecution is conducted with regards to especially grave, intentionally committed criminal offence, unless the criminal offence is referred to under letter d);</p> <p>d) four years if the criminal prosecution is conducted with regards to such criminal offence for which the exceptional punishment may be imposed according to the special part of the Criminal Code.</p> <p>iii) An accused person taken into custody may lodge a complaint against the decision on taking him/her into custody. There isn't any time limit for taking decision on this complaint. The complaint against this decision may be lodged even by a prosecutor (i.e. against the reasons for taking into the custody). However, the prosecutor is not entitled to lodge a complaint against decision on release from the custody with the exemption of cases when the judge decides not to impose custody because of its replacement with particular measure specified in the Criminal Proceedings Code (i.e. guarantee, probation, bail etc.).</p> <p>The defendant has the right to ask for release at any time. Such request must be decided on by the court promptly, within five working days, at the latest. If the request is rejected, the defendant may repeat it, unless alleging other reasons in his/her request, only after 14 days following the legal force of the rejection.</p> <p>iv) 1. The Criminal Proceedings Code contains provisions regulating this issue. The section 2 par. 4 states that criminal matters must be dealt with as fast as possible and while protecting in full the rights and liberties guaranteed by the Declaration of Basic Rights and Liberties and international treaties on human rights and basic liberties which the Czech Republic is bound with.</p> <p>2. Furthermore, as it has been stated before, our Criminal Proceedings Code contains provisions dealing with the maximum length of detention in the pre-trial stage and in the criminal proceedings in general.</p> <p>3. Moreover, the police agency is obliged to check the circumstances suggesting that a criminal offence has been committed:</p> <p>a) within two months following their receipt if the case falls within the jurisdiction of a magistrate, and there are no preparatory proceedings involved;</p> <p>b) within 3 months if it is another case falling within the jurisdiction of a district court;</p> <p>c) within 6 months if the case in the first instance falls within the jurisdiction of a regional court.</p> <p>If the complaint or another suggestion has not been checked within the above mentioned periods, the police agency justifies in writing for the information of the state prosecutor why it has been unable to terminate checking within the period set out under the law, and which acts are still to taken up, and for how long the checking will continue. The state prosecutor may through an instruction sent to the police agency both to modify the number of acts that are still to be taken up and to specify a different term allowed for checking.</p> <p>If the police agency has not terminated checking within the period extended in accordance with what has been written above, it submits the file to the state prosecutor with its justified proposal for extension of the period.</p>
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	<p>4. Section 164 of Criminal Proceedings Code states that:</p> <p>(1) The police agency is obliged to terminate the investigation, at the latest,</p> <p>a) within two months from the beginning of the criminal prosecution if the case falls within the jurisdiction of a magistrate;</p> <p>b) within three months from the beginning of the criminal prosecution if it is another case falling within the jurisdiction of a district court.</p> <p>(2) If the investigation has not been terminated within the terms mentioned under subsection 1, the police agency will justify in writing to the state prosecutor why it has not been possible to terminate the investigation within the term set out under the law, which acts are necessary to be performed, and for how long a time the investigation is to continue. The state prosecution may through an instruction sent to the police agency both modify the number of acts that are still to be executed and specify differently the time for which the investigation is still to continue.</p> <p>(3) The state prosecutor is obliged within the framework of supervision, at least once a month, to carry out a review of the case in all the cases in regards of which the investigation has not been terminated within the term in accordance with subsection 1, and if necessary, to charge the police agency with an obligation to execute particular acts. The state prosecutor will make a record of the review.</p> <p>5. Section 170 of the Criminal Proceedings Code states that: The police agency is obliged to terminate the investigation within six months following the initiation of the criminal prosecution, at the latest.</p> <p>6. Section 181 of the Criminal Proceedings Code states that: The chairman of the panel in the proceedings of a district court within a term of three weeks, and in the proceedings of a regional court of the first instance within a term of three months, from filing the action, is obliged to order the main trial in the case, the preliminary negotiation of the action, or to take up another act directed at the decision in the case, including charging the probation officer to execute acts directed at the decision of conditional suspension of the criminal prosecution, or approval of a settlement, or another decision in the case outside the main trial. If he/she cannot do so on grave grounds, he/she presents the file to the chairman of the court who either extends the term for the minimum required period depending on the nature of the case or takes up another convenient measure in compliance with the court agenda to ensure smooth course of the proceedings.</p>
<b>Estonia</b>	<p>a) Taking into custody may be applied as a preventive measure with regard to a suspect, accused or accused at trial in order to prevent the absconding of criminal proceedings, the commission of a new criminal offence by the suspect, accused or accused at trial, or in order to ensure the enforcement of a court judgment.</p> <p><b>b) Decision on the detention</b></p> <p>(i) The police have this right at the moment but according to the new Code of Criminal Procedure (enters into force 01 July 2004) this right will be transferred to the prosecutor.</p> <p>(ii) The permission for the taking of a suspect or accused into custody is given by a county or city court judge on the basis of a reasoned ruling submitted to him or her, which shall set out the period of time for holding the suspect or accused in custody.</p> <p>(iii) A person may not be held in custody for longer than six months in the investigation of a criminal matter. In the case of particular complexity</p>

	<p>or extent of a criminal matter, the Chief Public Prosecutor or senior county or city prosecutor may request the extension of the term for holding in custody for up to one year as an exception. The defendant and his/her counsel may appeal the ruling on taking into custody in the 2<sup>nd</sup> instance court.</p> <p>iv) There are no concrete provisions.</p>
<b>Hungary</b>	<p>a) The general conditions (must be met in all cases) are the following:</p> <ul style="list-style-type: none"> <li>— a criminal procedure is conducted against the suspected/charged person; and</li> <li>— the charge relates to a crime for which the criminal code stipulates imprisonment at least as an alternative sanction.</li> </ul> <p>Furthermore, at least one of the following specific indications must be present:</p> <p>a) the person charged with a crime fled, hid himself or herself from the judge, the prosecutor or the investigating authority, or attempted to flee, or, during the procedure, another procedure has been initiated against him or her for committing another intentional crime punishable with imprisonment;</p> <p>b) with regard to the risk of his or her fleeing or hiding, or for another reason it is a well-founded supposition that no other way to secure his or her presence exist;</p> <p>c) it is a well-founded supposition that, in case of leaving him free, he or she would frustrate, endanger, or render the success of the evidence more difficult, especially by influencing or harassing witnesses, by destroying, faking, hiding proofs or documents;</p> <p>d) it is a well-founded supposition that by leaving him or her free, he or she would complete the attempted crime, or would commit another crime punishable by imprisonment.</p> <p><b>b) Decision on the detention</b></p> <p>i) Any investigating authority, including the police, the border guards, the prosecutor, etc.</p> <p>ii) Before the submission of the charges to the court by the prosecutor: the investigating judge decides on the pre-trial detention.</p> <p>After the submission of the charges to the court by the prosecutor: the court at first instance decides on the pre-trial detention, after a year the court at second instance decides.</p> <p>The arrest without being taken into pre-trial detention cannot last longer than 72 hours. Besides, the Criminal Procedure Act provides that before the submission of the charges to the court by the prosecutor, the investigating judge shall examine the necessity of the detention</p> <ul style="list-style-type: none"> <li>— on the first occasion not later than a month after that he/she has first ordered the measure,</li> <li>— on the next occasions not later than in every three months.</li> </ul> <p>After a year, a higher court (departmental court) has to examine the necessity of the pre-trial detention in every two months. No investigation conducted against a defined suspect shall be longer than two years. Failing to order the prolongation of the detention within the time limits, the measure is automatically lifted. The pre-trial detention can not last</p>

	<p>more than three years.</p> <p>iii) It is always possible to request the lifting of the pre-trial detention. This claim is also considered to be a type of remedy. See the answer above as well.</p> <p>iv) No investigation conducted against a defined suspect shall be longer than two years. When the suspect is held in custody, the procedure has to be conducted out of turn. There is an absolute time-limit on the possible duration of the pre-trial detention. See our answer above.</p>
<b>Latvia</b>	<p>14) The legal grounds of pre-trial detention are regulated by the Criminal Proceeding Code of Latvia (CPCL) Sections 68, 69, 76, 77, 78.</p> <p>a) If there are sufficient grounds to believe that the accused individual or defendant, if not taken into custody, would attempt to escape from investigation and trial, or cause obstacles to establishing of truth in the criminal case, or commit criminal actions, as well as in order to ensure enforcement of the judgment, the Prosecutor and the Court shall be entitled to apply one of the means of safety provided for in the CPCL Section 69, including detention. The CPCL Section 76 provides for application of detention if a criminal offence has been committed punishable by criminal law with confinement. Detention as a means of safety can be applied to juveniles on exceptional basis if necessary due to severe nature of the committed crime, personality of the juvenile or repeated commitment of criminal offence.</p> <p><b>b) Detention resolution</b></p> <p>i) ii) Pursuant to the CPCL Section 76 part 3, detention as a means of safety may only be applied by resolution of Judge made on the basis of material presented by the Prosecutor or Investigator in the presence of the individual to be taken into custody and, in the cases specified in law – also in the presence of their lawful representative (for example, in case of juvenile). The Judge (Court), having reviewed materials of the criminal case and having heard the position of both the Prosecutor, Investigator, the individual taken into custody and, in the cases specified in law – also in the presence of their lawful representative, shall estimate whether there are lawful grounds to take the concerned individual into custody, and pass motivated resolution. The CPCL does not prescribe any certain period during which the judge has to determine whether or not detention should be applied. In practice, it should be done with reasonable speed.</p> <p>iii) The means of safety shall be removed if applied unlawfully or if no longer applicable, or they shall be altered, replaced with more or less severe ones, appropriate to circumstances of the case. The means of safety shall be removed by resolution of the Investigator, Prosecutor of Judge (Court) conducting proceedings in the criminal case.</p> <p>The means of safety - detention applied by the Judge (Court) during pre-trial investigation can only be removed or altered by motivated resolution of the Prosecutor.</p> <p>Resolution of the Judge on application of the means of safety – detention, extension of the term thereof can be appealed against by the suspect, the accused, their representative or attorney, as well as by the Investigator in charge of the criminal case, or by Prosecutor by means of submitting of auxiliary protest. An individual may submit complaint during seven days from the moment they become aware of application of the means of safety or prolongation of the duration thereof.</p> <p>Such a complaint or auxiliary protest shall be reviewed and decision on leaving the Judge's resolution unaltered or canceling thereof shall be made by higher instance court. Decision shall be made during maximum</p>

	<p>seven days from receipt of the complaint or auxiliary protest, with participation of the complaint or auxiliary protest submitting entity and the Prosecutor. The Court resolution shall be final and subject to no appeal.</p> <p>A complaint on resolution of the Judge (Court) on application or altering of the means of safety can be submitted by the defendant or their attorney, and in the cases specified in law – also by the lawful representative; while the Prosecutor may submit auxiliary protest to the higher instance court within seven days, provided that hearing of the case has been suspended upon passing of resolution for at least one month, or if proceedings have been suspended.</p> <p><i>iv)</i> The fact that individual is taken into custody does not mean that the court session in their case shall take place sooner than possible. The entity conducting proceedings shall be responsible for complete, versatile and impartial investigation of all circumstances of the case and to establish in accordance with the objective truth the existence of criminal offence as well as any other circumstances relevant to proper judgment in the criminal case. The criminal proceeding legislation has, however, prescribed maximum duration of pre-trial detention in order to provide compliance with human rights, and upon expiration thereof the individual shall be discharged from detention. The CPCL Section 77 provides that upon completion of investigation prior to expiration of the applicable maximum duration of detention the materials of criminal case shall be promptly presented to the accused and their attorney to cause familiarization with the materials.</p> <p>Duration of the means of safety - detention of an individual taken into custody may not exceed a year and six months from the day on which the case is referred to the court until completion of hearing of the case by first instance court. Upon expiration thereof, the means of safety – detention shall be terminated and the individual shall be promptly discharged from detention. The Supreme Court Senate may extend the duration of detention over a year and six months on exceptional basis in criminal cases related to especially severe crimes involving violence or threat of violence</p>
<b>Malta</b>	--
<b>Slovak Republic</b>	<p>Grounds for a Custody are regulated in the Section 67: The accused shall be only in custody if there are reasonable grounds to believe that – he would escape or go into hiding to avoid prosecution or punishment ;</p> <ul style="list-style-type: none"> <li>- he will try to influence the witnesses or co-accused or otherwise frustrate the investigation ;</li> <li>- he will continue in his criminal activity, accomplish the attempted crime or commit the crime he had prepared or had threatened to commit ;</li> <li>- if the Criminal prosecution has been initiated against him for a criminal offence punishable of the imprisonment sentence of at least 8 years</li> </ul> <p>Only a person against whom a charge has been lodged may placed in a custody detention, the decision shall be made by a court or in a pretrial procedure by a judge on application by a prosecutor.</p> <p>If any of the grounds for custody detention are present and if it is not possible to summon, bring in or detain the accused and thus secure his presence at the interrogation during pre-trial proceedings, a judge shall issue a warrant for the arrest of the accused on application by a prosecutor or, in judicial proceedings, such warrant shall be issued by the</p>



	<p>presiding judge of a panel. The arrest shall be made by the police on the basis of the warrant; if the execution of the warrant requires it, the police shall also track down the accused. The police body that made the arrest of the accused shall have to bring the accused without delay, not later than within 24 hours, before the court whose judge issued the warrant; in this is not possible due to the considerable distance between the place of arrest and the seat of the court whose judge issued the warrant, the accused shall have to be brought before another competent court not later than 24 hours after the arrest. If this does not happen, the accused shall have to be released. The judge before whom the accused person was brought shall have to hear the accused without delay, issue the decision concerning the custody and notify the accused of the decision not later than 48 hours and regarding to particularly serious offences not later than 72 hours after the accused was brought before him. If another competent judge conducts the interrogation, he shall inform the judge of the competent court who issued the arrest warrant of the result. Upon receiving the interrogation report, the latter judge shall issue the decision on the custody and notify the accused of such decision through the court which conducted the interrogation. If the accused is not informed of the decision within 24 hours after he was brought before a court or a judge for questioning, he shall have to be released.</p> <p>The decision on custody in judicial proceedings shall be issued by a judge. An appeal may be lodged against a custody decision, with the exception of the decision on its extension. Anyway, the accused shall have at any time the right to apply for release. If a prosecutor in pre-trial proceedings denies such application, he shall immediately submit it to the court. The court shall rule on such application without any delay. If the application is denied, the accused may not submit it again, unless he states other grounds, earlier than fourteen days after the decision became final.</p> <p>If any of the grounds for custody are present and if the matter is urgent and the custody decision cannot be obtained in advance, an investigator may place the accused under preliminary detention. He shall, however, have the duty to promptly inform a prosecutor of the detention and to hand him over a duplicate of the report he drew up upon the detention of the person and other documents the prosecutor needs to file a motion for the remand in custody. The prosecutor shall have to file the motion so as to be able to bring the accused before a court within 48 hours from the detention; otherwise the accused shall have to be released.</p>
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<b>Question 15</b>	<p><b>15) What is the applicable regime in case of preventive pre-trial detention (in terms of material conditions, prison conditions, role of the lawyer, ...) ?</b></p> <p><b>a) Are there any special provisions for certain categories of suspects (such as juveniles, terrorists, mentally ill)?</b></p> <p><b>b) How are pre-trial detainees to be treated, i.e. are there any minimum rules regarding the treatment of remand prisoners in your country, and if so, which? Are detained suspects segregated from those already convicted?</b></p>
<b>Cyprus</b>	<p>Since detention consists deprivation of the fundamental right of liberty, it is allowed only in particular circumstances, as mentioned in question 14 above, and the provisions of Article 11(6) of the Constitution (also mentioned above) are also taken into consideration, especially concerning the time limits of detention and the speed of such procedure. In addition to that, the suspect who is kept in prison has the right to have contact with his lawyer and he shall not be treated as a convicted person.</p>
<b>Czech Republic</b>	<p>The Criminal Proceedings Code and the Act on Execution of Custody contain regulation concerning the execution of custody.</p> <p>(a) Yes, the Act on Execution of Custody contains certain provisions regulation the execution of custody by foreigners and juveniles.</p> <p>b) These issues are dealt with by the above mentioned Act on the Execution of Custody that, among others, provides for the regulation of the principles of execution of custody, visits of defendants, their correspondence, their rights etc. Furthermore, the question of social care of defendants is addressed as well. The details are provided for by the decree of the Ministry of Justice.</p> <p>Concerning the second part of the question, the detained suspects are segregated from those already convicted.</p>
<b>Estonia</b>	<p>Persons in custody are lodged in locked cells on a 24-hour basis. Persons in custody are permitted to receive short-term visits for personal, legal or commercial purposes. Persons in custody who are citizens of foreign states have an unrestricted right to receive visits from consular officers of their countries of nationality.</p> <p>a) Are there any special provisions for certain categories of suspects (such as juveniles, terrorists, mentally ill)?</p> <p>Juveniles are kept in separate institutions. Persons in custody who are accused in the same criminal matter and other persons in custody on the order of preliminary investigator, prosecutor or court, shall be separated.</p> <p>b) How are pre-trial detainees to be treated, i.e. are there any minimum rules regarding the treatment of remand prisoners in your country, and if so, which? Are detained suspects segregated from those already convicted?</p> <p>Detained persons are at all times kept separately from convicted prisoners. Conditions regarding the treatment of pre-trial detainees are stated in the Imprisonment Act.</p> <p>Pre-trial detainees are held separately from other prisoners as required by the law. There are no separate institutions for holding pre-trial detainees with the exception of juveniles. Special institutions have not been built due to lack of resources but they are kept in separate living units in maximum security prisons or in police custody.</p> <p>Persons in custody are lodged in locked cells on a twenty-four-hour basis with at least one hour in the open air. For that purpose special cells outside living units have been constructed.</p> <p>Unlike sentenced prisoners detainees are permitted to wear personal</p>

	<p>clothing and receive packages. They also have the right to short-term visits of personal, legal or commercial interest in matters which the person in custody cannot conduct through third persons, albeit this can be done only with the permission of a preliminary investigator, prosecutor or court if this is necessary to ensure the conduct of criminal proceedings. A person in custody has the unrestricted right to receive visits from his or her criminal defense council. Visits from council take place uninterruptedly within sight but not hearing distance from prison officers. Officers do not have the right to review the content of any material necessary for the preparation of defense that is handed over to the detainee.</p> <p>A person in custody has the right of correspondence and the use of telephone and other public communication channels if relevant technical conditions exist. The content of the correspondence of a person in custody and of messages forwarded by telephone by or to a person in custody may be examined only with the permission of a court.</p> <p>Persons in custody have access to national daily newspapers, books and periodicals stored at library. A person in custody may possess a personal radio or television set in the cell if the director of the prison grants permission.</p> <p>Minors who have been in custody for at least one month are allowed to continue to acquire basic education or general secondary education on the basis of a national curriculum.</p>
<b>Hungary</b>	<p>In this case, legal assistance is compulsory (ie the authority has to appoint a legal counsel unless the suspect has his/her own).</p> <p>Pre-trial detention shall be spent in a penal institution. In exceptional cases, prior to the filing of the indictment, the person in pre-trial detention may also be held in a police cell – for a period of maximum thirty days – based on a court decision; and if justified in order to take an investigatory action, based on the decision of the prosecutor on two occasions – for a period of maximum fifteen days in each case.</p> <p>The defendant held in pre-trial detention may not be restricted in exercising his procedural rights. The defendant shall be granted the opportunity to contact his defence counsel, and, in the case of foreign citizens, the representative of the consulate of his native country. The defendant held in pre-trial detention may only be subjected to restrictions following from the nature of the criminal proceeding, or required by the rules of the institution executing the detention.</p> <p>The remand in custody is executed in special penal institutions /prisons/ designated for this purpose. After lodging an appeal against conviction, the person in detention keeps his/her remand status and is treated according to the same rules and regulations.</p>
<b>Latvia</b>	<p>a) --</p> <p>b) Pursuant to the CPCL Section 76, the individuals taken into custody shall be accommodated at the investigation jail or investigation jail department within confinement of another type. The soldiers taken into custody may be kept in guardhouse.</p> <p>The procedure for admission and accommodation of individuals taken into custody, their routine regime, rights and duties, medicinal care and financial support, means of safety and the procedure for discharge of the individuals taken into custody from the investigation jail or referral to another confinement establishment is regulated by the Cabinet of Ministers.</p>

<b>Malta</b>	--
<b>Slovak Republic</b>	The conditions of a regime of custody are regulated by the Act No. 156/1993 Coll. on Custody Execution and by the Regulation No 114/1994 Coll. on Rules of Custody. They both include provisions about special regime of Custody for juveniles (segregation, appropriate treatment...) and for foreigners (contacts on their respective embassy or International organization, providing with translated information's, or regime of paying in foreign currency).

<b>Question 16</b>	<b>(16) What judicial control is there of the legal and material conditions during preventive detention?</b>
<b>Cyprus</b>	According to Article 11(7) of the Constitution, every person who is deprived of his liberty by arrest or detention shall be entitled to take proceedings (either to appeal or to follow the proceedings of <i>habeas corpus</i> ) by which the lawfulness of his detention shall be decided speedily by a court and his release shall be ordered, if the detention is not lawful.
<b>Czech Republic</b>	The Act on Execution of Custody contains provisions regulating the protection of rights of accused persons. The accused may lodge complaints and requests with the state authorities. The prison is obliged to transmit these complaints and requests immediately. Furthermore, if the accused person requires so, he/she must be allowed to speak with the prison director or his deputy. The employees of the Prison Service are obliged to respect the rights of accused in connection with the execution of custody.
<b>Estonia</b>	There is possibility to make a complaint to the police authorities or the prison administration. The Legal Chancellor has the right to examine the conditions of prisons.
<b>Hungary</b>	Lifting the coercive measures can be initiated at any stage, any time. Furthermore, law provides that: <ul style="list-style-type: none"> <li>• before the submission of the charges to the court by the prosecutor, on the first occasion not later than a month after ordering the measure, on the next occasions not later than in every three months, the investigating judge shall examine the necessity of the measure. After a year a higher court (departmental court) has to examine the necessity in every two months.</li> <li>• after the submission of the charges to the court by the prosecutor, the court at first instance reviews the measure within 6 months, after a year the court at second instance does so.</li> </ul>
<b>Latvia</b>	--
<b>Malta</b>	--
<b>Slovak Republic</b>	An investigator, a prosecutor and a judge shall have to verify, at every stage of criminal proceedings, whether the grounds for custody are still present or if there was any change. A judge shall do so in pre-trial proceedings only when deciding about an application by a prosecutor to extend the custody, when deciding about an application by a prosecutor to change the grounds for custody, and when deciding about an application by the accused to be released. If the grounds for the remand in custody are no longer present, the accused shall have to be immediately released. In pre-trial proceedings, a prosecutor may also issue the release decision. If a prosecutor in pre-trial proceedings establishes that there has been a change in the grounds for

	custody he shall submit an application to the competent judge to issue a decision on the change in the grounds for custody.
<b>Question 17</b>	<b>(17) Does your country recognize or transpose decisions by legal authorities of foreign countries regarding supervision or other alternatives to pre-trial detention? If this is the case, please describe these rules.</b>
<b>Cyprus</b>	--
<b>Czech Republic</b>	As far as this question is concerned, the Czech law deals with the issue of recognition of decisions regarding supervision on defendants only as regards the supervision of conditionally sentenced or conditionally released offender. The Czech Republic has ratified the European Convention on supervision of conditionally sentenced or conditionally released offenders. This convention that has thus become part of our national law. However, the Czech Republic made a reservation in respect of Part III. and Part IV. of the Convention and will not apply provisions provided for therein.
<b>Estonia</b>	There is no legal basis for that.
<b>Hungary</b>	For the time being, the Hungarian government is waiting for the EU legislation to be prepared in this field.
<b>Latvia</b>	It is not provided in Latvian Republic legislation and relevant international agreements the acknowledgement of foreign legal insitutions decisions and perfomance concerning other safety measures, except imprisonment.
<b>Malta</b>	--
<b>Slovak Republic</b>	--

Annex 1 provided by BELGIUM

Table provided by Belgium (Question 8)

	En traitement	Transaction	Sans suite	Jugement avec peine	Jugement sans peine	Total	Pourcentage Transaction + Peine	Pourcentage Peine
1998	79.241	675.554	433.355	162.922	12.828	1.363.900	61%	12%
1999	96.767	822.352	450.766	167.760	12.670	1.550.315	64%	11%
2000	101.895	1.067.394	472.042	191.395	13.021	1.845.747	68%	10%
2001	235.451	1.138.851	408.175	97.113	5.824	1.885.414	66%	5%

Le tableau ci-dessus décrit pour les années 1998, 1999, 2000 et 2001 le nombre de parties dont le dossier est :

- en traitement
- en transaction
- classé sans suite
- jugé avec condamnation
- jugé sans condamnation

Deux pourcentages sont proposés :

Le premier reprend le nombre de transactions et de jugements avec peine

Le second ne reprend que le nombre de jugements avec peine

Remarques :

- Ce tableau ne prend pas en compte les chiffres de l'arrondissement d'Eupen
- Le fait que le pourcentage de peine diminue est lié au fait que les dossiers sont plus récents et donc pas encore jugés.

Table provided by Belgium (Question 11)

Ressortissants étrangers en détention au 15 mars 2002

nationalité	hommes	femmes	total
Britannique	28	1	29
Danois	1		1
Allemand	37	3	40
Finlandais	1		1
Français	239	14	253
Grecque	22	3	25
Irlandaise	1		1
Italienne	255	12	267
Luxembourgeoise	3		3
Néerlandaise	124	9	133
Autrichienne	3	1	4
Espagnole	52	4	56
Suédoise	2		2
Portugaise	37	2	39
Total	805	49	854

Population pénitentiaire au 15/3/2002	9098
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Pourcentage par rapport à la population carcérale en date du 15/3/2002	9,39%
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Annex 2 provided by FINLAND

Penal Code

Chapter 3 — Vindication and mitigation (621/1967)

Section 1 (263/1940)

(1) An act which would otherwise be punishable shall remain unpunishable when committed by a child under fifteen years of age.

(2) The measures that can be applied to such a child are provided in the Child Welfare Act.

Section 2 (613/1974)

A person at least fifteen but under eighteen years of age who commits an offence shall be sentenced, when said offence could have been punishable by life imprisonment, to imprisonment for at least two and at most twelve years. If the penalty in the provision in question is imprisonment for a fixed period or a fine, the sentence shall be at most three fourths of the most severe penalty provided and at least the minimum penalty provided in chapter 2.

Section 3

(1) An act of an insane person and an act by a person mentally deficient due to senility or another similar reason shall remain unpunishable.

(2) If someone is temporarily deranged so that he/she is not in possession of his/her mental faculties, an act that he/she commits while in such a condition shall also remain unpunishable.

Section 4

(1) If someone is regarded as not having been in full possession of his/her mental faculties at the time he/she committed an offence, but he/she cannot be regarded as totally irresponsible in accordance with section 3, the general penalty shall be that provided in section 2.

(2) In this case the state of voluntary intoxication or other such self-induced mental aberration shall not by itself be a reason for such reduction of penalty.

Section 5

(1) An act which is deemed to have occurred more through accident than through negligence shall not be punishable.

(2) If the penalty provision contains a specific minimum period of imprisonment, the court may, unless the public interest demands otherwise, and for special reasons which are to be mentioned in the judgment, pass a sentence shorter than the minimum period or, when no penalty more severe than a fixed term of imprisonment is provided, pass a sentence of a fine. (613/1974)

(3) A court can waive punishment in cases where

(1) the offence, when assessed as a whole, considering its harmfulness and the degree of culpability of the offender indicated by it, is to be deemed of minor significance;

(2) the offence is to be deemed excusable because of special reasons concerning the act or the offender;

(3) punishment is to be deemed unreasonable or pointless, considering the settlement reached by the offender and the injured party or the action taken by the offender to prevent or remove the effects of his/her offence, or to further its being cleared up, his/her personal circumstances, the other consequences of the offence to him/her, the actions by the social security and health authorities, or other circumstances; or

(4) the offence would not have an essential effect on the total sentence owing to the provisions on sentencing to a joint punishment. (1060/1996)

(4) In addition of the provisions in paragraph (3), a court can waive the punishment for an offence committed while the offender was under eighteen years of age, if the act is deemed to be the result of his/her thoughtlessness or imprudence rather than his/her being heedless of the prohibitions and commands of the law. (302/1990)

Section 6

If someone has committed an act to protect himself/herself or another or his/her or another's property against an ongoing or imminent unlawful attack, and this act, though otherwise punishable, was necessary for the repelling of the attack, he/she shall not be sentenced to a punishment for such self-defence.

Section 7



Self-defence shall also be justified when someone forces his/her way unlawfully into the room, house, estate or vessel of another, or when someone caught in the act resists another who is trying to take back his/her own property.

### LEGAL AID

Amount of free legal aid cases in 1999		
first instance	18 424	66,4 %
court of appeals	7 443	26,8 %
Supreme court	1 210	4,4 %
Others	645	2,4 %
Total	27 731	100 %
Costs for free legal aid (million marks, 5,94573 marks=1 €) in 1999		
first instance	128,0	81,7 %
court of appeals	23,7	15,1 %
supreme court	2,2	1,4 %
Others	2,3	1,4 %
Total	156,6 (26,3 million €)	100 %

## Criminal Procedure Act

### Chapter 8

Hearing and decision in a criminal case regardless of the absence of the defendant

#### Section 11

(1) A case may be heard and decided regardless of the absence of the defendant, if his/her presence is not necessary for the resolution of the case and if he/she has been summoned to the hearing under such a threat. In this event, the defendant may be sentenced to a fine or to imprisonment for at most three months.

(2) If the defendant is to be sentenced to a punishment under paragraph (1), but he/she has had a legal excuse that he/she could not have announced in advance, the defendant has the right to have the case reopened by notifying the court of the same within 30 days of verifiable service of a notice of the punishment on the defendant. If the defendant does not prove that he/she had a legal excuse, the case is to be dismissed.

(3) The absence of the defendant does not prevent the rejection of the charge.

#### Section 12

On the consent of the defendant, the case may be heard and decided regardless of his/her absence, if the defendant has been summoned to the hearing under such a threat and if his/her presence is not necessary for the resolution of the case. In this event, the defendant is not to be sentenced to imprisonment for more than six months.

#### Section 13

Notwithstanding the provisions in sections 11 and 12, the defendant is not to be sentenced to imprisonment, unless he/she has been heard in person in the main hearing.

Annex 4 Provided by France

Tableau indiquant la contribution de l'Etat aux frais d'avoacts selon les ressources:

Actuellement les tranches de ressources de l'aide juridictionnelle partielles sont ainsi fixées :

Ressources	Part contributive de l'Etat (en pourcentage de la contribution versée en cas d'aide juridictionnelle totale)
803 à 838	85 %
839 à 884	70 %
885 à 947	55 %
948 à 1020	40 %
1021 à 1111	25 %
1112 à 1203	15%

Annex 5 provided by the United Kingdom (see question 11b).

Foreign Prisoners from other EU Member States:

The latest recorded figures available for England and Wales are for the end of February 2002. During this period the prison population was just over 69,900.

European Country	Female prisoners	Male prisoners	Total	% of total prison population
Austria	1	2	3	0.004
Belgium	5	46	51	0.073
Denmark	1	8	9	0.013
Finland	0	1	1	0.001
France	15	88	103	0.15
Germany	16	102	118	0.17
Irish Republic	35	604	638	0.91
Italy	5	100	105	0.15
Liechtenstein	0	0	0	0
Luxembourg	0	1	1	0.001
Netherlands	25	170	194	0.28
Portugal	12	86	98	0.14
Sweden	1	3	4	0.006
Spain	15	105	120	0.17